United Nations

# Report of the Committee against Torture

Twenty-ninth session
(11-22 November 2002)
Thirtieth session
(28 April-16 May 2003)

General Assembly
Official Records
Fifty-eighth session
Supplement No. 44 (A/58/44)

A/58/44

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## NOTE

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# I. ORGANIZATIONAL AND OTHER MATTERS

## A. States parties to the Convention

1. As at 16 May 2003, the closing date of the thirtieth session of the Committee against Torture, there were 133 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report Djibouti, Equatorial Guinea, the Holy See and Timor-Leste have become parties to the Convention. Furthermore, Equatorial Guinea declared that it did not recognize the competence of the Committee under article 20 of the Convention, and Paraguay made the declaration under articles 21 and 22. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention are listed in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention, may be found in the United Nations web site (www.un.org - Site index - treaties).

## B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The twenty-ninth session (529th to 546th meetings) was held at the United Nations Office at Geneva from 11 to 22 November 2002, and the thirtieth session (547th to 573rd) was held from 28 April to 16 May 2003. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.529-573).

## C. Membership of the Committee

5. The membership of the Committee remained the same during the period covered by the present report with the exception of Mr. Alejandro González Poblete, who passed away in February 2003. On the date of the adoption of the present report the Government of Chile had proposed Mr. Claudio Grossman to replace Mr. González Poblete for the remainder of his term (31 December 2003) in accordance with article 17, paragraph 6, of the Convention and article 13 of the Committee's rules of procedure.[1] The list of members, with their terms of office, appears in annex IV to the present report.

## D. Election of officers

6. At its thirtieth session, on 28 April 2003, the Committee decided that, in order to ensure equitable geographic balance, it would defer the election of Vice-Chairman to replace Mr. González Poblete pending the assumption of duties by his successor.

## E. Agendas

7. At its 529th meeting, on 11 November 2003, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General (CAT/C/69) as the agenda of its twenty-ninth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.

8. At its 547th meeting, on 28 April 2003, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General (CAT/C/70) as the agenda of its thirtieth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.
7. Annual report of the Committee on its activities.

## F. Pre-sessional working group

9. At its twenty-fifth session, the Committee decided, in accordance with rules 61 and 106 of its rules of procedure, to establish, starting with the 2002-2003 biennium, a working group composed of four of its members that would meet for a five-day session during the week preceding each Committee session. The General Assembly, by resolution 56/143 of 19 December 2001 entitled "Torture and other cruel, inhuman or degrading treatment or punishment", approved that request.

10. Prior to the twenty-ninth session, the working group met from 4 to 8 November 2002 in order to consider communications under article 22 of the Convention and make recommendations to the Committee. The working group was composed of Mr. Camara,

Mr. González Poblete, Mr. Mariño and Mr. Yakovlev. Prior to the thirtieth session, the working group met from 23 to 25 April 2003 and was composed of Mr. El Masry, Mr. Mariño, Mr. Yakovlev and Mr. Yu Mengjia.

### G. Participation of Committee members in other meetings

11. A number of members participated in various meetings during the period under consideration, and informed the Committee accordingly. Thus, Mr. Burns, Ms. Gaer and Mr. Rasmussen participated in the first inter-committee meeting of the human rights treaty bodies which was held from 26 to 28 June 2002. Ms. Gaer participated in the brainstorming meeting on treaty body reform organized by the Office of the High Commissioner for Human Rights (OHCHR) and the Government of Liechtenstein, from 5 to 7 May 2003. Finally, Mr. Burns, Mr. Camara, Mr. El Masry and Mr. Mariño participated, on 13 May 2003, in an informal meeting with the International Law Commission on the question of reservations to normative multilateral treaties, including human rights treaties.

### H. Follow-up to conclusions and recommendations adopted under article 19 of the Convention

12. At its thirtieth session the Committee decided to identify in its recommendations to States parties, as appropriate, specific issues on which the State party concerned should provide information within one year. The rapporteurs on follow-up, appointed under rule 61, paragraph 3, of the rules of procedure, will brief the Committee about the information received under this procedure, whereupon the Committee will decide on the action to be taken.

### I. General comments

13. At its thirtieth session, the Committee decided to initiate the drafting of a general comment on article 2 of the Convention, and appointed Mr. Mariño as rapporteur on that issue.

### J. Activities of the Committee in connection with the Optional Protocol to the Convention

14. At its twenty-ninth session, the Committee decided to set up a working group which would meet prior to the thirtieth session in order to discuss matters relating to the adoption by the General Assembly of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The working group, composed of Mr. Burns, Ms. Gaer, Mr. Mavrommatis and Mr. Rasmussen, met on 24 and 25 April 2003. As a result of its recommendations, the Committee adopted the following statement and guidelines.

"Statement by the Committee on the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

"The Committee against Torture welcomes General Assembly resolution 57/199 of 18 December 2002, adopting and opening for signature, ratification and accession the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"Notwithstanding efforts by the international community and the mechanisms already in place, torture and ill-treatment still continue to be practised in many countries and all too often impede the effective functioning of national criminal justice systems. The Optional Protocol has as its objective the establishment of a system of regular visits undertaken by independent international or national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. It therefore provides a valuable complement to the Convention against Torture and the work performed by the Committee, recalling that efforts to eradicate torture and ill-treatment should first and foremost be concentrated on prevention.

"The Committee urges the States parties to ratify the Optional Protocol to the Convention against Torture at the earliest possible stage and strongly encourages them, in accordance with this instrument, to set up or designate at the domestic level independent visiting mechanisms for the prevention of torture. The Committee also urges States parties to recognize forthwith the power of the Subcommittee on Prevention to conduct visits to any place where persons are deprived of their liberty."

### "Guidelines adopted by the Committee regarding the Optional Protocol to the Convention

"The Committee welcomes the adoption by the General Assembly of the Optional Protocol to the Convention, whose aim is to prevent torture and other cruel, inhuman and degrading treatment or punishment through a system of regular visits to places of deprivation of liberty by both independent international and national bodies. It notes that no other optional protocol to a human rights treaty creates an independent monitoring body whose members are distinct from those serving on the supervisory committee for the treaty. The Committee makes the following observations and recommendations in connection with the Protocol and its future supervisory body, the Subcommittee on Prevention.

### "A. General issues

"1. The Committee welcomes the adoption of the Optional Protocol, encourages all States parties to the Convention against Torture to ratify it and affirms its expectations of full cooperation between the Committee and the Subcommittee in the common objective of preventing torture, as defined in the Convention.

"2. The Committee will encourage States parties to ratify the Protocol when examining reports under article 19. A paragraph to that effect may be included in the conclusions and recommendations addressed to the States. Furthermore, when adopting lists of issues and in its dialogue with the representatives of States parties, particularly with reference to article 11 of the Convention, the Committee may ask whether the State party in question is considering signing and ratifying the Optional Protocol and, if so, what measures it is taking to that effect, including the establishment or designation of one or more national preventive mechanisms that meet the requirements of the Protocol. The Committee may also recommend the establishment or designation of national bodies as envisaged in the Protocol.

"3. Cooperation and coordination between the Committee and its Subcommittee are both desirable and required under the provisions of the Optional Protocol. Cooperation is envisaged, in general terms, in article 11 (c), whereas article 10, paragraph 3, provides that the Committee and Subcommittee shall hold their sessions simultaneously at least once a year. Therefore, while acknowledging that the Subcommittee will be an autonomous body, effective mechanisms of cooperation and coordination should be established with a view to enhancing State parties' compliance with the terms of the Convention and its Optional Protocol. These may include: (a) the participation of one or several members of the Committee as observers at the meetings of the Subcommittee devoted to the adoption of its rules of procedure. A joint meeting prior to the adoption of the final draft is also recommended; (b) the establishment of a 'standing committee on cooperation' consisting of members of both the Committee and Subcommittee; (c) holding at least one joint meeting per year.

### "B. Composition and meetings of the Subcommittee

"The Committee agreed that it would be very positive if one or more experts would belong to the Committee and the Subcommittee at the same time, as that would facilitate cooperation and coordination. Such a possibility should therefore be envisaged. However, there could be some practical difficulties in that regard, such as those linked to the election process.

"The provision contained in article 10, paragraph 3, could also be an obstacle, as it would not be possible for the same expert(s) to attend simultaneous sessions of the Committee and the Subcommittee without neglecting his or her attendance at the other body. The Committee considered, however, that the word 'sessions' rather than 'meetings' meant that the two bodies were expected to convene at the same time. The Committee discussed whether overlapping meeting dates by just one or a few days could still be considered in conformity with paragraph 3 and might offer the advantage of allowing overlapping membership. If such an interpretation of the words 'sessions' and 'simultaneously' was not accepted, other mechanisms would have to be designed to achieve the same goals, for instance having regular joint meetings.

### "C. Reporting

"The Committee considers that joint meetings should be held on the occasion of the presentation of the report of the Subcommittee to the Committee. Any requests to the Committee under articles 16, paragraph 4, or 24, paragraph 2, of the Optional Protocol may also be presented at that time.

### "D. Areas of coordination between the Committee and the Subcommittee

"The Committee identified the following areas where information sharing and other coordination should be envisaged.

"1. In connection with the activities of the Committee under article 19

"The Committee and the Subcommittee could agree on the following: if the Subcommittee has scheduled a preventive visit to a State party during the six months before or six months after the time when the Committee has scheduled a review of a periodic report of that State party, the Subcommittee should postpone its visit until it has consulted with the Committee.

"2. In connection with the activities of the Committee under article 20

"It would be desirable for visits planned by the Committee to examine information submitted under article 20 of the Convention alleging that systematic torture is practised in a State party to have priority over visits of the Subcommittee. Consultations between the two bodies should take place in that regard. If the Subcommittee agrees, the following procedure could be followed. Upon notification that the Committee has adopted the decision to undertake a confidential inquiry, the Subcommittee should modify its schedule of visits so that none takes place:

"(a) During the time when the Committee is conducting a confidential inquiry, until such time as the report of the inquiry is published or the Committee informs the Subcommittee that the inquiry is completed;

"(b) For one year after the Committee has conducted a confidential inquiry, except where the Committee requests the Subcommittee to undertake a visit.

"The Committee should formally address a request to other United Nations treaty bodies and mechanisms dealing with torture or related matters, including the Subcommittee once it is established, to bring immediately to the Committee's attention any information that might reveal the existence of systematic use of torture in a State party to the Convention bound by article 20.

"3. In general

"(a) The Subcommittee should provide to the Committee annually a list of the visits that it has scheduled for the coming year;

"(b) Confidential information transmitted to or emanating from the Committee under articles 19, 20 or 22 could be shared with the Subcommittee, upon its request, with the consent, as appropriate, of the author and/or the State party concerned;

"(c) If a State party has ratified the Optional Protocol, the Committee may recommend in its conclusions and recommendations, or decisions under articles 19, 20 or 22 of the Convention, that: (i) the Subcommittee make, and the relevant State party receive a preventive visit; (ii) the Subcommittee take specific action in relation to the relevant State party's national mechanisms;

"(d) The Committee may provide the Subcommittee with lists of issues and goals that merit special attention during its preventive visits and in the analysis of findings. There could be two sets of lists: a general one that could apply to any country, and a specific one referring to the particular country to be visited;

"(e) The Subcommittee should consider sharing with the Committee, upon its request, confidential information transmitted to or emanating from it, with the consent, as appropriate, of the author and/or the State party/States parties concerned."

### K. Informal meeting of the Committee with the States parties to the Convention

15. On 12 May 2003, the Committee held an informal meeting with representatives of the States parties to the Convention, at which it informed them about developments concerning its methods of work. These included the decision to transmit a list of issues to States parties prior to the examination of their respective reports, the follow-up procedure and the measures to be taken with regard to non-reporting States.

16. An exchange of views on the proposals for reform of the treaty body system made by the Secretary-General took place. The Committee expressed the view that efforts to increase cooperation and harmonization between the different treaty bodies should continue, and suggested that a standing committee on coordination could be established to deal with issues common to all of them. Furthermore, the Committee was in favour of expanding the current core document submitted by States parties; however, it did not believe that a single report submitted by States to all treaty bodies could improve the functioning of the current reporting system.

17. Finally, some States parties expressed concern at the inaccuracies contained in the press releases issued by the United Nations Department of Public Information reflecting the examination of State party reports by the different treaty bodies, and suggested that the committees look into the matter.

### L. Meetings of the Committee with the Special Rapporteur on the question of torture of the Commission on Human Rights and members of the Board of Trustees of the Voluntary Fund for Victims of Torture

18. On 15 May 2003 the Committee met with the Special Rapporteur on the question of torture of the Commission on Human Rights, Mr. Theodor van Boven. They exchanged views on their respective mandates and activities and expressed satisfaction about the current level of cooperation. Committee members were particularly interested in the study submitted by the Special Rapporteur to the Commission on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms (E/CN.4/2003/69).

19. Also on 15 May 2003, the Committee met with Mr. Ivan Tosevski and Ms. Elisabeth Odio-Benito, members of the Board of Trustees of the Voluntary Fund for Victims of Torture, who informed the Committee about the number of projects under consideration by the Board and the financial situation of the Fund. Both organs expressed the wish that the current level of cooperation between them should continue.

### M. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

20. The following joint statement was adopted to be issued on 26 June 2003, the International Day in Support of Victims of Torture:

> "The United Nations Committee against Torture, the Special Rapporteur of the Commission on Human Rights on the question of torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the United Nations Deputy High Commissioner for Human Rights and Officer in charge of the Office of the United Nations High Commissioner for Human Rights make the following statement on the occasion of the United Nations International Day in Support of Victims of Torture.
>
> "In an international environment deeply affected by conflict and violence, we feel it is essential to reiterate that it is the obligation of States to prevent, prohibit, investigate and punish all acts of torture and other forms of ill-treatment. Freedom from torture and other cruel, inhuman or degrading treatment is an absolute right which cannot be derogated from under any circumstances, including in times of armed conflict and other situations of public emergency. We also take this opportunity to highlight the absolute character of the principle of non-refoulement, which provides that no one shall be deported to a State where he or she would be in danger of being subjected to torture.
>
> "We welcome the adoption by the United Nations General Assembly of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which allows for visits by independent experts to places where people are detained or otherwise deprived of their liberty, as an important tool for preventing torture, and we encourage States to ratify this new instrument and to set up national mechanisms allowing such visits to take place.
>
> "We recall that States' obligations with regard to the prohibition of torture also include the duty to provide adequate, effective and prompt reparation to torture victims, including facilities for their rehabilitation. We therefore continue to support those States, organizations and other organs of civil society that are committed to eradicating torture and securing redress for all torture victims.
>
> "On this International Day in Support of Victims of Torture, we call upon Governments, non-governmental organizations, private and public entities and individuals to express their solidarity with victims of torture and members of their families by contributing generously to the United Nations Voluntary Fund for Victims of Torture, so that the Fund can increase its financial assistance to about 200 projects run by non-governmental organizations all over the world to provide psychological, medical, social, economic, legal and other forms of humanitarian assistance to about 100,000 victims of torture and members of their families."

## II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

21. During the period covered by the present report 13 reports were submitted to the Secretary-General. Initial reports were submitted by Cambodia (CAT/C/21/Add.5), Latvia (CAT/C/21/Add.4), Yemen (CAT/C/16/Add.10) and Lithuania (CAT/C/37/Add.5). A second

report was submitted by Monaco (CAT/C/38/Add.2). Third reports were received from Germany (CAT/C/49/Add.4), Bulgaria (CAT/C/34/Add.16), Cameroon (CAT/C/34/Add.17) and Morocco (CAT/C/66/Add.1). Fourth reports were submitted by Argentina (CAT/C/55/Add.7), Canada (CAT/C/55/Add.8), Finland (CAT/C/67/Add.1) and Switzerland (CAT/C/55/Add.9).

22. As at 16 May 2003, the situation of overdue reports was as follows:[2]

| State party | Date on which the report was due |
|---|---|
| **Initial reports** | |
| Uganda | 25 June 1988 |
| Togo | 17 December 1988 |
| Guyana | 17 June 1989 |
| Guinea | 8 November 1990 |
| Somalia | 22 February 1991 |
| Bosnia and Herzegovina | 5 March 1993 |
| Seychelles | 3 June 1993 |
| Cape Verde | 3 July 1993 |
| Burundi | 19 March 1994 |
| Antigua and Barbuda | 17 August 1994 |
| Ethiopia | 12 April 1995 |
| Albania | 9 June 1995 |
| Chad | 7 July 1996 |
| Tajikistan | 9 February 1996 |
| Côte d'Ivoire | 16 January 1997 |
| Democratic Republic of the Congo | 16 April 1997 |
| Malawi | 10 July 1997 |
| Honduras | 3 January 1998 |
| Kenya | 22 March 1998 |
| Bahrain | 4 April 1999 |
| Bangladesh | 3 November 1999 |
| Niger | 3 November 1999 |
| South Africa | 8 January 2000 |
| Burkina Faso | 2 February 2000 |
| Mali | 27 March 2000 |
| Turkmenistan | 25 July 2000 |
| Japan | 29 July 2000 |
| Mozambique | 14 October 2000 |
| Qatar | 9 February 2001 |
| Ghana | 6 October 2001 |

| State party | Date on which the report was due |
|---|---|
| Botswana | 7 October 2001 |
| Gabon | 7 October 2001 |
| Lebanon | 3 November 2001 |
| Sierra Leone | 24 May 2002 |
| Nigeria | 27 July 2002 |
| Saint Vincent and the Grenadines | 30 August 2002 |
| Lesotho | 11 December 2002 |
| Mongolia | 22 February 2003 |
| Ireland | 10 May 2003 |
| **Second periodic reports** | |
| Afghanistan | 25 June 1992 |
| Belize | 25 June 1992 |
| Philippines | 25 June 1992 |
| Uganda | 25 June 1992 |
| Togo | 17 December 1992 |
| Guyana | 17 June 1993 |
| Brazil | 27 October 1994 |
| Guinea | 8 November 1994 |
| Somalia | 22 February 1995 |
| Romania | 16 January 1996 |
| Nepal | 12 June 1996 |
| Serbia and Montenegro | 9 October 1996 |
| Yemen | 4 December 1996 |
| Jordan | 12 December 1996 |
| Bosnia and Herzegovina | 5 March 1997 |
| Benin | 10 April 1997 |
| Latvia | 13 May 1997 |
| Seychelles | 3 June 1997 |
| Cape Verde | 3 July 1997 |
| Cambodia | 13 November 1997 |
| Burundi | 19 March 1998 |
| Slovakia | 27 May 1998 |
| Antigua and Barbuda | 17 August 1998 |
| Costa Rica | 10 December 1998 |
| Sri Lanka | 1 February 1999 |

| State party | Date on which the report was due |
|---|---|
| Ethiopia | 12 April 1999 |
| Albania | 9 June 1999 |
| United States of America | 19 November 1999 |
| The former Yugoslav Republic of Macedonia | 11 December 1999 |
| Namibia | 27 December 1999 |
| Republic of Korea | 7 February 2000 |
| Tajikistan | 9 February 2000 |
| Cuba | 15 June 2000 |
| Chad | 8 July 2000 |
| Republic of Moldova | 27 December 2000 |
| Côte d'Ivoire | 16 January 2001 |
| Democratic Republic of the Congo | 16 April 2001 |
| El Salvador | 16 July 2001 |
| Lithuania | 1 March 2001 |
| Kuwait | 6 April 2001 |
| Malawi | 10 July 2001 |
| Honduras | 3 January 2002 |
| Kenya | 22 March 2002 |
| Kyrgyzstan | 4 September 2002 |
| Saudi Arabia | 21 October 2002 |
| Bahrain | 4 April 2003 |

### Third periodic reports

| State party | Date on which the report was due |
|---|---|
| Afghanistan | 25 June 1996 |
| Belize | 25 June 1996 |
| France | 25 June 1996 |
| Philippines | 25 June 1996 |
| Senegal | 25 June 1996 |
| Uganda | 25 June 1996 |
| Uruguay | 25 June 1996 |
| Austria | 27 August 1996 |
| Togo | 17 December 1996 |
| Ecuador | 28 April 1997 |

| State party | Date on which the report was due |
|---|---|
| Guyana | 17 June 1997 |
| Turkey | 31 August 1997 |
| Tunisia | 22 October 1997 |
| Australia | 6 September 1998* |
| Algeria | 11 October 1998 |
| Brazil | 27 October 1998 |
| Guinea | 8 November 1998 |
| Somalia | 22 February 1999 |
| Malta | 12 October 1999 |
| Liechtenstein | 1 December 1999 |
| Romania | 16 January 2000 |
| Nepal | 12 June 2000 |
| Serbia and Montenegro | 9 October 2000 |
| Yemen | 4 December 2000 |
| Jordan | 12 December 2000 |
| Monaco | 4 January 2001 |
| Bosnia and Herzegovina | 5 March 2001 |
| Benin | 10 April 2001 |
| Latvia | 13 May 2001 |
| Seychelles | 3 June 2001 |
| Cape Verde | 3 July 2001 |
| Cambodia | 13 November 2001 |
| Mauritius | 7 January 2002 |
| Burundi | 19 March 2002 |
| Slovakia | 27 May 2002 |
| Slovenia | 14 August 2002 |
| Antigua and Barbuda | 17 August 2002 |
| Armenia | 12 October 2002 |
| Costa Rica | 10 December 2002 |
| Sri Lanka | 1 February 2003 |
| Ethiopia | 12 April 2003 |

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* Requested by the Committee for November 2004.

| State party | Date on which the report was due |
|---|---|
| **Fourth periodic reports** | |
| Afghanistan | 25 June 2000 |
| Belarus | 25 June 2000 |
| Belize | 25 June 2000 |
| Bulgaria | 25 June 2000 |
| Cameroon | 25 June 2000 |
| France | 25 June 2000 |
| Hungary | 25 June 2000 |
| Mexico | 25 June 2000 |
| Philippines | 25 June 2000 |
| Russian Federation | 25 June 2000 |
| Senegal | 25 June 2000 |
| Uganda | 25 June 2000 |
| Uruguay | 25 June 2000 |
| Austria | 27 August 2000 |
| Panama | 22 September 2000 |
| Togo | 17 December 2000 |
| Colombia | 6 January 2001 |
| Ecuador | 28 April 2001 |
| Guyana | 17 June 2001 |
| Peru | 5 August 2001 |
| Turkey | 31 August 2001 |
| Tunisia | 22 October 2001 |
| Chile | 29 October 2001 |
| China | 2 November 2001 |
| Netherlands | 19 January 2002 |
| United Kingdom of Great Britain and Northern Ireland | 6 January 2002 |
| Italy | 10 February 2002 |
| Portugal | 10 March 2002 |
| Libyan Arab Jamahiriya | 14 June 2002 |
| Poland | 24 August 2002 |
| Australia | 6 September 2002 |
| Algeria | 11 October 2002 |
| Brazil | 27 October 2002 |
| Guinea | 8 November 2002 |
| New Zealand | 8 January 2003 |

| State party | Date on which the report was due |
|---|---|
| Guatemala | 3 February 2003 |
| Somalia | 22 February 2003 |
| Paraguay | 10 April 2003 |

23. The Committee expressed concern at the number of States parties which did not comply with their reporting obligations and asked two of its members, Mr. Mariño and Mr. Rasmussen, to look into ways and means of facilitating the submission of overdue reports. The two members sent reminders to States whose initial reports were overdue by five years or more and met informally with representatives of a number of them.

## III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

24. At its twenty-ninth and thirtieth sessions, the Committee considered reports submitted by 12 States parties under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its twenty-ninth session:

| | |
|---|---|
| Cyprus: third periodic report | CAT/C/54/Add.2 |
| Egypt: fourth periodic report | CAT/C/55/Add.6 |
| Estonia: initial report | CAT/C/16/Add.9 |
| Spain: fourth periodic report | CAT/C/55/Add.5 |
| Venezuela: second periodic report | CAT/C/33/Add.5 |

25. The following reports were before the Committee at its thirtieth session:

| | |
|---|---|
| Azerbaijan: second periodic report | CAT/C/59/Add.1 |
| Belgium: initial report | CAT/C/52/Add.2 |
| Cambodia: initial report | CAT/C/21/Add.5 |
| Iceland: second periodic report | CAT/C/59/Add.2 |
| Slovenia: second periodic report | CAT/C/43/Add.4 |
| Turkey: second periodic report | CAT/C/20/Add.8 |

26. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. With the exception of Cambodia,[3] all of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports.

27. Country rapporteurs and alternate rapporteurs were designated for each of the reports considered. The list appears in annex V to the present report.

28. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

29. The following sections contain the text of conclusions and recommendations adopted by the Committee with respect to the above-mentioned States parties' reports.

## CYPRUS[4]

30. The Committee considered the third periodic report of Cyprus (CAT/C/54/Add.2) at its 536th and 539th meetings, held on 15 and 18 November 2002 (CAT/C/SR.536 and 539), and adopted the following conclusions and recommendations.

### A. Introduction

31. The Committee welcomes the submission of the third periodic report of Cyprus, which was submitted on time and is generally in conformity with the Committee's guidelines for the preparation of periodic reports. It also welcomes the additional written and oral information provided by the delegation. The Committee commends the way in which the State party has addressed its previous recommendations.

### B. Positive aspects

32. The Committee notes with satisfaction that there are no reported cases of torture or political prisoners in the State party.

33. The Committee welcomes the recent legislative, administrative and institutional developments that took place in the State party since the consideration of its previous periodic report, namely:

(a) The bill for the amendment of the Ratification Law making the subjection to cruel, inhuman or degrading treatment or punishment as described in article 16 of the Convention a criminal offence, and providing for the presumption of ill-treatment if it is ascertained by medical examination that the person detained bears external injuries which were not present at the time of arrest;

(b) The adoption of the Protection of Witnesses Law by the Parliament with a view to securing anonymity of witnesses;

(c) The adoption of the Law on the Prevention of Domestic Violence;

(d) The enactment of a new law in 2000 for the suppression of trafficking in persons and of the sexual exploitation of children;

(e) The abolition of the death penalty;

(f) The amendment of the Aliens and Immigration Law to provide additional protection to persons claiming refugee status;

(g) The enactment of a new law for the payment of adequate compensation;

(h) The decision of the Council of Ministers to empower the Attorney-General to appoint criminal investigators to investigate allegations of criminal conduct by police;

(i) The new measures taken to give effect to the newly adopted Psychiatric Treatment Law;

(j) The improvement and renovation of prison facilities;

(k) The establishment of a national institution for the promotion and protection of human rights;

(l) The establishment of a Police Human Rights Office to receive and investigate complaints of human rights violations by police officers;

(m) The introduction of a programme for the training of judges of first instance courts in the field of human rights.

### C. Subjects of concern

34. Although there is a generally positive trend regarding the treatment of detained persons by police, the existence of some cases of ill-treatment require that the authorities remain vigilant.

### E. Recommendations

35. **The Committee commends the State party for its ongoing efforts to ensure the effective implementation of the Convention, appreciates the work done so far and calls upon the State party to continue these efforts.**

36. **The Committee recommends that the State party widely disseminate the Committee's conclusions and recommendations, in all appropriate languages, in the country.**

## EGYPT[5]

37. The Committee considered the fourth periodic report of Egypt (CAT/C/55/Add.6) at its 532nd and 535th meetings, held on 13 and 14 November 2002 (CAT/C/SR.532 and 535), and adopted the following conclusions and recommendations.

### A. Introduction

38. The Committee welcomes the submission of the fourth periodic report of Egypt, which was submitted on time and in full conformity with the Committee's guidelines for the preparation of periodic reports. The Committee also welcomes the open dialogue with the representatives of the State party during the oral examination of the report and the additional

information submitted by them. The Committee notes that the report contains very useful information regarding the adoption of new legislation aiming at the implementation and dissemination of the Convention.

### B. Positive aspects

39. The Committee welcomes the following:

(a) The enactment of legislation banning flogging as a disciplinary penalty for prisoners;

(b) Circular letter No. 11 of 1999 regulating the procedures for the unannounced inspections which the Department of Public Prosecutions has an obligation to conduct in places of detention, particularly if it receives written or verbal reports or notifications indicating that a person is being held illegally at a police station or other place of detention;

(c) Decisions taken by the Egyptian courts to refuse any confession made under duress as evidence;

(d) The efforts of the State party to give greater emphasis to human rights training of law enforcement officials and public servants;

(e) The establishment of a Human Rights Committee in 1999 with the mandate to study and propose ways and means of ensuring a more effective protection of human rights;

(f) The establishment in 2000 of the Directorate-General for Human Rights Affairs at the Ministry of Justice, whose functions are to assume responsibility for the fulfilment of the legal aspects of international obligations arising from human rights instruments, including the preparation of replies to international bodies, promote greater public awareness and provide training on these matters for members of the judiciary and the Department of Public Prosecutions;

(g) The State party's efforts to set up a national human rights commission.

### C. Factors and difficulties impeding the implementation of the Convention

40. The Committee is aware of the difficulties that the State party faces in its prolonged fight against terrorism, but recalls that no exceptional circumstances whatsoever can be invoked as a justification for torture, and expresses concern at the possible restrictions of human rights which may result from measures taken for that purpose.

### D. Subjects of concern

41. The Committee is concerned about the following:

(a) The fact that a state of emergency has been in force since 1981, hindering the full consolidation of the rule of law in Egypt;

(b) The many consistent reports received concerning the persistence of the phenomenon of torture and ill-treatment of detainees by law enforcement officials, and the absence of measures to ensure effective protection and prompt and impartial investigations. Many of these reports relate to numerous cases of deaths in custody;

(c) The Committee expresses particular concern at the widespread evidence of torture and ill-treatment in administrative premises under the control of the State Security Investigation Department, the infliction of which is reported to be facilitated by the lack of any mandatory inspection by an independent body of such premises;

(d) The many reports of abuse of under-age detainees, especially sexual harassment of girls, committed by law enforcement officials, the lack of monitoring machinery to investigate such abuse and prosecute those responsible, and the fact that minors kept in places of detention have contact with adult detainees;

(e) The reports received concerning ill-treatment inflicted on men because of their real or alleged homosexuality, apparently encouraged by the lack of adequate clarity in the penal legislation;

(f) The continued use of administrative detention in Egypt;

(g) The fact that victims of torture and ill-treatment have no direct access to the courts to lodge complaints against law enforcement officials;

(h) The excessive length of many of the proceedings initiated in cases of torture and ill-treatment, and the fact that many court decisions to release detainees are not enforced in practice;

(i) The legal and practical restrictions on the activities of non-governmental organizations engaged in human rights work;

(j) The significant disparities in compensation granted to the victims of torture and ill-treatment.

## E. Recommendations

42. **The Committee recommends that the State party:**

**(a) Reconsider the maintenance of the state of emergency;**

**(b) Adopt a definition of torture which fully corresponds to the definition in article 1, paragraph 1, of the Convention;**

**(c) Guarantee that all complaints of torture or ill-treatment, including those relating to death in custody, are investigated promptly, impartially and independently;**

**(d) Ensure that mandatory inspection of all places of detention by prosecutors, judges or another independent body takes place, and does so at regular intervals;**

(e) Ensure that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families;

(f) Eliminate all forms of administrative detention. In addition, the premises controlled by the State Security Investigation Department should be subject to mandatory inspection, and reports of torture or ill-treatment committed there should be investigated promptly and impartially;

(g) Ensure that legislation gives full effect to the rights recognized in the Convention and institute effective remedies for the violation of such rights; ensure in particular that proceedings take place within a reasonable time after the submission of complaints, and that any court decision to release a detainee is actually enforced;

(h) Abolish incommunicado detention;

(i) Ensure that all persons convicted by decisions of military courts in terrorism cases shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law;

(j) Halt all practices involving abuse of minors in places of detention and punish the perpetrators, and ban the holding of under-age detainees with adult detainees;

(k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation. Steps should also be taken to prevent all degrading treatment during body searches;

(l) Establish the State's jurisdiction over all persons alleged to be responsible for torture who are present in the country and are not extradited to other States in order to be brought to justice, in accordance with the provisions of articles 5 to 8 of the Convention;

(m) Ensure that non-governmental organizations engaged in human rights work can pursue their activities unhindered, and in particular that they have access to all places of detention and prisons so as to guarantee greater compliance with the ban on torture and ill-treatment;

(n) Establish precise rules and standards to enable the victims of torture and ill-treatment to obtain full redress, while avoiding any insufficiently justified disparities in the compensation which is granted;

(o) Continue the process of training law enforcement personnel, in particular as regards the obligations set out in the Convention and the right of every detainee to medical and legal assistance and to have contact with his or her family;

(p) Consider adopting the declarations referred to in articles 21 and 22 of the Convention;

(q) Widely disseminate the Committee's conclusions and recommendations in the State party in all appropriate languages.

43. **The Committee reiterates to the State party the recommendations addressed to it in May 1996 on the basis of the conclusions the Committee reached under the procedure provided for in article 20 of the Convention, and requests the State party to inform it of the steps it has taken to implement them.**

44. **Bearing in mind the statements made by the State party concerning its willingness to cooperate with the United Nations human rights treaty bodies and mechanisms, the Committee recommends that the State party agree to a visit by the Special Rapporteur on torture of the Commission on Human Rights.**

## ESTONIA[6]

45. The Committee considered the initial report of Estonia (CAT/C/16/Add.9) at its 534th, 537th and 545th meetings, held on 14, 15 and 21 November 2002 (CAT/C/SR.534, 537 and 545), and adopted the following conclusions and recommendations.

### A. Introduction

46. The Committee welcomes the initial report of Estonia, but regrets that the report, due on 19 November 1992, was submitted with more than eight years' delay. It notes, however, that the report includes material up to 2001. The Committee acknowledges, in this regard, the difficulties encountered by the State party during its political and economic transition and hopes that in the future it will comply fully with its obligations under article 19 of the Convention.

47. The report, which contains information mainly on legal provisions and fails to address in detail the practical implementation of the Convention and the difficulties encountered in this regard, does not comply fully with the reporting guidelines of the Committee. However, the Committee acknowledges the extensive responses to its questions received from the delegation.

### B. Positive aspects

48. The Committee notes the following positive developments:

(a) The nomination of a Legal Chancellor who also acts in the capacity of an ombudsman;

(b) The abolition of the death penalty in 1998;

(c) The possible direct applicability, under the Constitution, of the definition of torture set out in article 1 of the Convention;

(d) The entry into force on 1 September 2002 of the new Penal Code, which introduces torture as an offence and aims at developing a flexible and individualized penal system that will increase the possibilities for the rehabilitation of prisoners by providing them with an opportunity to work or study;

(e) The improvement of prison conditions through, in particular, the suppression of special punishment cells, the renovation of detention facilities and the opening of the new Tartu prison, which will conform to recognized international standards. The Committee also welcomes the entry into force on 1 December 2000 of the Imprisonment Act, based on the "European Prison Rules", as well as the power given to the Legal Chancellor and members of the Health Protection Office under the 2000 Internal Rules of Detention to have free access to all rooms in detention centres;

(f) The publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the responses by the State party, which will enable a general debate among all interested parties;

(g) The commitment of the State party to continue its practice of publishing the concluding observations of the United Nations treaty bodies, as well as the reports submitted by Estonia to those bodies, on the web site of the Ministry for Foreign Affairs;

(h) The ratification by the State party on 30 January 2002 of the Rome Statute of the International Criminal Court;

(i) The assurance given by the State party that due consideration will be given to the possible ratification of the Optional Protocol to the Convention.

### C. Subjects of concern

49. The Committee is concerned that:

(a) Article 1 of the Convention has not yet been directly applied by magistrates, and that the direct application of international human rights treaties, although possible in theory, is not widely practised in the courts;

(b) The definition of torture contained in article 122 of the Penal Code as "continuous physical abuse or abuse which causes great pain" does not seem to comply fully with article 1 of the Convention. The Committee notes that, according to the delegation, article 122 protects physical as well as mental health, but is of the opinion that the wording of the article may lead to restrictive interpretations as well as confusion;

(c) Isolated cases of ill-treatment of detainees by officials still occur in police stations. Although violence, including sexual violence, between prisoners in detention facilities and between patients in psychiatric facilities has diminished, the high risk of such incidents still remains. Conditions in old police detention centres are still of concern;

(d) The point at which a suspect or detainee can obtain access to a doctor of choice - assuming one is available at all - is not clear. In any event, there are legal exceptions to the right to have access to a lawyer and to "a person of choice" that could be abused by police. In general, no precise time frame is set for the exercise of the rights of persons detained in police custody;

(e) Under Estonian law, illegal immigrants and rejected asylum-seekers may be detained in expulsion centres until deported; such persons may be subjected to long periods of detention when expulsion is not enforceable;

(f) Persons of Russian nationality and stateless persons (overlapping categories) are overrepresented in the population of convicted prisoners;

(g) No specific body seems to be in charge of collecting data in detention facilities, whether police stations, prisons, or psychiatric facilities.

## D. Recommendations

50. **The Committee recommends that the State party:**

**(a) Incorporate into the Penal Code a definition of the crime of torture that fully and clearly responds to article 1 of the Convention, and provide extensive training for judges and lawyers on the content of the Convention as well as its status in domestic law;**

**(b) Ensure that law enforcement, judicial, medical and other personnel who are involved in the custody, detention, interrogation and treatment of detainees or psychiatric patients are trained with regard to the prohibition of torture and that their recertification includes both verification of their awareness of the Convention's requirements and a review of their records in treating detainees or patients. Training should include developing the skills needed to recognize the sequelae of torture;**

**(c) Ensure close monitoring of inter-prisoner and inter-patient violence, including sexual violence, in detention and psychiatric facilities, with a view to preventing them;**

**(d) Continue the renovation of all detention facilities in order to ensure that they conform to international standards;**

**(e) Strengthen the safeguards provided in the Code of Criminal Procedure against ill-treatment and torture and ensure that, in law as well as in practice, persons in police custody and in remand have the right of access to a medical doctor of their choice, the right to notify a person of their choice of their detention and access to legal counsel. Legal exceptions to these rights should be narrowly defined. Persons deprived of their liberty, including suspects, should immediately be informed of their rights in a language that they understand. The right of criminal suspects to have a defence counsel should be extended to witnesses and to persons who have not yet been charged. The State party should introduce a precise chronology that would specify at what point the rights of all detainees may be exercised and must be respected;**

**(f) Elaborate a code of conduct for police officers, investigators and all other personnel involved in the custody of detainees;**

**(g) Introduce legally enforceable time limits for the detention of illegal immigrants and rejected asylum-seekers who are under expulsion orders;**

**(h) Fully examine and report on the reasons for the overrepresentation of persons of Russian nationality and stateless persons in the population of convicted prisoners;**

**(i) Consider ratifying the 1961 Convention on the Reduction of Statelessness;**

**(j) Create a mechanism for the collection and analysis of data on matters relating to the Convention in detention and psychiatric facilities;**

**(k) Consider making the declarations under articles 21 and 22 of the Convention.**

51. **The Committee recommends that the State party, in its next periodic report, which will be considered as the fourth periodic report and should be submitted by 19 November 2004:**

**(a) Provide detailed information concerning, in particular: (i) the precise mandate and the results of the activities undertaken by the Legal Chancellor and the members of the Health Protection Office when visiting detention centres; (ii) the results of the activities of the Legal Chancellor in dealing with complaints of ill-treatment or torture by State officials;**

**(b) Explain how, in practice, the impartiality and objectivity of investigations of complaints of ill-treatment made by persons detained in police custody are ensured at all times;**

**(c) Provide statistical data disaggregated, inter alia, by gender, age, nationality and citizenship, on complaints of torture and ill-treatment by State officials, on the prosecutions initiated in response, and on the penal and disciplinary sentences pronounced.**

52. **The Committee further recommends that the State party widely disseminate in the country any reports submitted by Estonia to the Committee, the conclusions and recommendations of the Committee, as well as the summary records of the review, in appropriate languages, including Estonian and Russian, through official web sites, the media and non-governmental organizations.**

## SPAIN[7]

53. The Committee considered the fourth periodic report of Spain (CAT/C/55/Add.5) at its 530th, 533rd and 540th meetings, held on 12, 13 and 19 November 2002 (CAT/C/SR.530, 533 and 540), and adopted the following conclusions and recommendations.

### A. Introduction

54. The Committee welcomes the fourth periodic report of Spain, which was submitted by the State party by the scheduled deadline. Although the report contains abundant information on legislative developments, the Committee observes that it provides little information on the implementation in practice of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the period since the submission of the previous report.

55. The Committee appreciates Spain's sending a large and highly qualified delegation for the consideration of the report, thus demonstrating the State party's concern to continue the frank and constructive dialogue which Spain has been holding with the Committee. The Committee

welcomes with satisfaction the additional information provided by the State party in the form of a supplementary report and its exhaustive oral replies to the questions of members, on which occasion it also furnished pertinent statistics.

## B. Positive aspects

56. The Committee welcomes with satisfaction the fact that under article 96 of the Spanish Constitution the Convention forms part of the domestic legal order and may be invoked directly before the courts.

57. The Committee reiterates, as stated in its previous conclusions and recommendations (A/53/44, paras. 119-136), that the Penal Code in force since 1996 conforms, generally speaking, to article 1 of the Convention. It welcomes with satisfaction the fact that article 57, as amended by Organization Act No. 14/1999 of 9 June, allows judges and courts in torture cases to add ancillary injunctions for the subsequent protection of the victim to the main sentence.

58. The Committee also notes with satisfaction:

(a) The ratification in October 2000 of the Rome Statute of the International Criminal Court;

(b) The adoption of measures to protect the rights of detainees, such as the preparation of the *Standards Handbook for Judicial Police Proceedings* and its distribution to members of the State security and police forces and to judges and prosecutors. The *Handbook* lays down rules governing acts by officials, particularly in cases which entail specific restrictions on rights and freedoms;

(c) The efforts made to provide training programmes for officials of the State security and police forces;

(d) The new Instruction from the Secretary of State for Immigration on the treatment of foreign stowaways, replacing the Instruction of 17 November 1998 on the same subject. This establishes a series of safeguards concerning the right to official legal representation in administrative or judicial proceedings which may lead to the acceptance of possible asylum applications, refusal of entry or expulsion from Spanish territory;

(e) Progress in modernizing the prison system, with the building of 13 new prisons with a capacity of more than 14,000 inmates;

(f) Reduction in numbers of prison inmates awaiting sentencing;

(g) Regular donations to the United Nations Voluntary Fund for Victims of Torture.

## C. Factors and difficulties impeding the application of the Convention

59. The Committee is aware of the difficult situation confronting the State party as a result of the serious and frequent acts of violence and terrorism which threaten the security of the State, resulting in loss of life and damage to property. The Committee recognizes the right and the

duty of the State to protect its citizens from such acts and to put an end to violence, and observes that its lawful reaction must be compatible with article 2, paragraph 2, of the Convention, whereby no exceptional circumstances whatsoever may be invoked as a justification of torture.

## D. Subjects of concern

60. The Committee observes with concern the dichotomy between the assertion of the State party that, isolated cases apart, torture and ill-treatment do not occur in Spain (CAT/C/55/Add.5, para. 10) and the information received from non-governmental sources which reveals continued instances of torture and ill-treatment by the State security and police forces.

61. Of particular concern are the complaints concerning the treatment of immigrants, including sexual abuse and rape, allegedly on racist or xenophobic grounds. The Committee notes that Spain has become an important gateway to Europe for immigrants, and that this has meant a significant increase in the country's foreign population. In this context the omission from the definition of torture in article 174 of the Penal Code of torture "based on discrimination of any kind", notwithstanding the fact that, under the Code, racism is deemed to be an aggravating factor in any offence, takes on particular importance.

62. The Committee continues to be deeply concerned at the fact that incommunicado detention up to a maximum of five days has been maintained for specific categories of particularly serious offences. During this period, the detainee has no access to a lawyer or to a doctor of his choice nor is he able to notify his family. Although the State party explains that incommunicado detention does not involve the complete isolation of the detainee, who has access to an officially appointed lawyer and a forensic physician, the Committee considers that the incommunicado regime, regardless of the legal safeguards for its application, facilitates the commission of acts of torture and ill-treatment.

63. The Committee also expresses its concern at the following:

(a) The substantial delays attending legal investigations into complaints of torture, which may lead to convicted persons being pardoned or not serving their sentences owing to the length of time since the offence was committed. This further delays the realization of the rights of victims to moral and material compensation;

(b) The failure of the administration, in some cases, to initiate disciplinary proceedings when criminal proceedings are in progress, pending the outcome of the latter. Delays in judicial proceedings may be such that, once criminal proceedings have concluded, disciplinary proceedings are time-barred;

(c) Cases of ill-treatment during enforced expulsion from the country, particularly in the case of unaccompanied minors;

(d) The severe conditions of imprisonment of some of the prisoners whose names appear on the list of inmates under close observation (FIES). According to information received, prisoners under level one of the close observation regime have to remain in their cells for most of the day, and in some cases are allowed only two hours in the yard, are excluded from group, sports and work activities, and are subjected to extreme security measures. Generally speaking, it would seem that the physical conditions of imprisonment of these prisoners are at variance with prison methods aimed at their rehabilitation and could be considered prohibited treatment under article 16 of the Convention.

### E. Recommendations

64. **The Committee recommends that the State party should consider the possibility of improving the definition of torture in article 174 of the Penal Code in order to bring it fully into line with article 1 of the Convention.**

65. **The Committee recommends that the State party should continue to take measures to prevent racist or xenophobic incidents.**

66. **The Committee invites the State party to consider precautionary measures to be used in cases of incommunicado detention, such as:**

**(a) A general practice of video recording of police interrogations with a view to protecting both the detainee and the officials, who could be wrongly accused of torture or ill-treatment. The recordings must be made available to the judge under whose jurisdiction the detainee is placed. Failure to do this would prevent any other statement attributed to the detainee from being considered as evidence;**

**(b) A joint examination by a forensic physician and a physician chosen by the detainee held incommunicado.**

67. **The Committee reminds the State party of its obligation to carry out prompt and impartial investigations and to bring the alleged perpetrators of human rights violations, and of torture in particular, to justice.**

68. **The Committee recommends that the State party should ensure the initiation of disciplinary proceedings in cases of torture or ill-treatment, rather than await the outcome of criminal proceedings.**

69. **The Committee encourages the State party to take the necessary measures to ensure that the process of expulsion from the country, in particular in the case of minors, is in keeping with the Convention.**

70. **The Committee recommends that these conclusions and recommendations be widely disseminated in the State party in all appropriate languages.**

## VENEZUELA[8]

71. The Committee considered the second periodic report of Venezuela (CAT/C/33/Add.5) at its 538th, 541st and 545th meetings, held on 18, 19 and 21 November 2002 (CAT/C/SR.538, 541 and 545), and adopted the following conclusions and recommendations.

## A. Introduction

72. The Committee welcomes with satisfaction the second periodic report of Venezuela, which should have been submitted in August 1996 but was received in September 2000 and updated in September 2002. This report contains the information which the State party was to have included in its third periodic report, which should have been submitted in August 2000.[9]

73. The Committee notes that although the report contains abundant information on the legal provisions which have entered into force since the previous report was submitted, it lacks information on facts relating to the implementation in practice of the Convention. It contains no descriptions of situations or facts which have been examined or considered by the judicial, administrative or other authorities with jurisdiction over the issues dealt with in the Convention.

74. The Committee also had before it additional material supplied by the State party, and a report specially prepared by the Office of the Ombudsman. The information contained in this document and its annexes has been very useful in evaluating compliance with the obligations the Convention places on the State party.

75. The Committee thanks the State party for sending a large and well-qualified delegation of representatives of the Government and the Office of the Ombudsman; its frank and constructive dialogue with them facilitated consideration of the report.

## B. Positive aspects

76. The Committee welcomes with satisfaction the entry into force on 30 December 1999 of the new Constitution of the Bolivarian Republic of Venezuela, which demonstrates progress in human rights. In particular, the Committee considers as positive the following aspects of the Constitution:

(a) It gives constitutional status to human rights treaties, covenants and conventions, declares that they take precedence in domestic law, prescribes that they should be immediately and directly applicable and provides that the absence of any law regulating these rights does not impair their exercise;

(b) It recognizes the right of individuals to submit petitions or complaints to the international bodies established for the purpose in order to seek protection for their human rights. This recognition is in accordance with the declaration by the State party in 1994 under article 22 of the Convention;

(c) It requires the State to investigate and impose penalties for human rights offences, declares that action to punish them is not subject to a statute of limitations and excludes any measure implying impunity, such as an amnesty or a general pardon;

(d) It requires offences concerning human rights violations and crimes against humanity to be heard in ordinary courts;

(e) It imposes on the State the obligation to compensate in full victims of human rights violations and recognizes the right to rehabilitation of victims of torture and cruel, inhuman or degrading treatment inflicted or tolerated by agents of the State;

(f) It regulates custody safeguards appropriately, e.g. a prior court order is required for any arrest or detention, except in flagrante delicto; it establishes a period of 48 hours for bringing a detainee before a judicial authority, as the Code of Criminal Procedure already provides; it regards as the general rule that persons charged should remain at liberty and pre-trial custody as the exception;

(g) It stipulates a series of safeguards for the detainee, such as access to a lawyer immediately on being detained and a ban on obtaining confessions by torture;

(h) It makes compulsory the extradition of persons charged with human rights offences and makes provision for a brief, public, oral procedure for trying them.

77. The Committee considers of particular importance the establishment under the Constitution of the Office of the Ombudsman as an independent body responsible for the promotion, protection and monitoring of the rights and safeguards established in the Constitution and in the international human rights instruments ratified by Venezuela.

78. The Committee takes note with satisfaction of the adoption of various legislative provisions and the establishment of units in various sectors of the State administration as an indication of the importance assigned to better protection and promotion of human rights. Important instances of such provisions are the basic laws on states of emergency, on refugees and asylum-seekers, on the Public Prosecutor's Office and on the protection of children and young people. Among the units established, mention should be made of the Human Rights Department of the Ministry of the Interior and Justice.

79. It also welcomes with satisfaction the ratification of the Rome Statute of the International Criminal Court in December 2000.

## C. Subjects of concern

80. The Committee expresses its concern at the following:

(a) The failure, despite the extensive legal reforms undertaken by the State party, to classify torture as a specific offence in Venezuelan legislation in accordance with the definition in article 1 of the Convention;

(b) The numerous complaints of torture, cruel, inhuman and degrading treatment, abuse of authority and arbitrary acts committed by agents of State security bodies which render the protective provisions of the Constitution and the Code of Criminal Procedure inoperative;

(c) Complaints of abuse of power and improper use of force as a means of control, particularly during demonstrations and protests;

(d) Complaints of threats and attacks against sexual minorities and transgender activists, particularly in the State of Carabobo;

(e) Information on threats to and harassment of persons who bring complaints of ill-treatment against police officers and the lack of adequate protection for witnesses and victims;

(f) The absence of prompt and impartial investigations of complaints of torture and cruel, inhuman and degrading treatment, and the lack of an accessible, institutionalized procedure in order to ensure the right of victims of acts of torture to obtain redress and fair and adequate compensation, as article 14 of the Convention provides;

(g) The numerous instances in prisons of prisoner-on-prisoner violence and violence against prisoners by prison officers, which have led to serious injuries and in some cases to death. The precarious material conditions in prisons are also a matter for concern;

(h) The lack of information, including statistical data, on torture and cruel, inhuman or degrading treatment or punishment, broken down by nationality, gender, ethnic group, geographical location and type and place of detention.

## D. Recommendations

81. **The Committee recommends that the State party should:**

**(a) Adopt legislation making torture a punishable offence. Pursuant to the fourth transitional provision of the new Constitution, this requires a special act or the reform of the Penal Code within a year of the establishment of the National Assembly; this period has long expired;**

**(b) Adopt all necessary measures to ensure immediate and impartial investigation of all cases of complaints of torture and cruel, inhuman or degrading treatment. The officials concerned should be suspended from their duties during these investigations;**

**(c) Adopt measures to regulate and institutionalize the right of victims of torture to fair and adequate compensation and draw up programmes for their physical and psychological rehabilitation to the fullest extent possible, as the Committee has already recommended in its previous conclusions and recommendations;**

**(d) Continue its activities of education in and promotion of human rights, particularly the prohibition of acts of torture, for law enforcement and medical personnel;**

**(e) Adopt measures to improve material conditions of detention in prisons and prevent both prisoner-on-prisoner violence and violence against prisoners by prison personnel. It is also recommended that the State party strengthen independent prison inspection procedures.**

82. **The Committee requests that the State party include statistical data in its next periodic report, broken down, inter alia, by nationality, age and gender of the victims, and an indication of the services to which the persons accused belong, with regard to cases under the Convention coming before domestic bodies; it should also include the results of the investigations carried out and the consequences for the victims in terms of redress and compensation.**

83. **The Committee invites the State party to submit its fourth periodic report at the latest by 20 August 2004 and to disseminate widely the Committee's conclusions and recommendations.**

## AZERBAIJAN[10]

84. The Committee considered the second periodic report of Azerbaijan (CAT/C/59/Add.1) at its 550th and 553rd meetings, held on 30 April and 1 May 2003 (CAT/C/SR.550 and 553), and adopted the following conclusions and recommendations.

### A. Introduction

85. The Committee welcomes the second periodic report of Azerbaijan, as well as the oral information provided by the high-level delegation. The Committee particularly welcomes the State party's assurances that the concerns and recommendations adopted by the Committee will be pursued seriously.

86. The report, which mainly addresses legal provisions and lacks detailed information on the practical implementation of the Convention, does not fully comply with the reporting guidelines of the Committee. The Committee emphasizes that the next periodic report should contain more specific information on implementation.

### B. Positive aspects

87. The Committee notes the following positive developments:

(a) The efforts by the State party to address the Committee's previous concluding observations through, in particular, the important Presidential Decree of 10 March 2000;

(b) The declaration under article 22 of the Convention enabling individuals to submit complaints to the Committee;

(c) The ratification of several significant human rights treaties, in particular the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(d) The extensive legal and legislative reforms by the State party, including the adoption of a new Criminal Code and a new Code of Criminal Procedure;

(e) The introduction of the offence of torture in the new Criminal Code, and the State party's report of some convictions for this crime;

(f) The transfer of remand centres of the Ministry of Internal Affairs to the authority of the Ministry of Justice;

(g) The creation of the post of Ombudsman;

(h) The assurances by the State party that it is taking action to reduce the incidence of tuberculosis in places of detention;

(i) The agreement concluded with the International Committee of the Red Cross, enabling ICRC representatives to have unrestricted access to convicted persons in places of detention, as well as the State party's assurance that access for non-governmental organizations to visit and examine conditions in penitentiary establishments is unlimited.

## C. Subjects of concern

88. The Committee is concerned about:

(a) Numerous ongoing allegations of torture and ill-treatment in police facilities and temporary detention facilities, as well as in remand centres and in prisons;

(b) The fact that the definition of torture in the new Criminal Code does not fully comply with article 1 of the Convention, because, inter alia, article 133 omits references to the purposes of torture outlined in the Convention, restricts acts of torture to systematic blows or other violent acts, and does not provide for criminal liability of officials who have given tacit consent to torture;

(c) The lack of information on the implementation of article 3 of the Convention regarding the transfer of a person to a country where he/she faces a real risk of torture, and on the rights and guarantees granted to the persons concerned;

(d) The substantial gap between the legislative framework and its practical implementation;

(e) The apparent lack of independence of the judiciary despite the new legislation;

(f) Reports that some persons have been held in police custody much beyond the time limit of 48 hours established in the Code of Criminal Procedure, and that in exceptional circumstances, persons can be held in temporary detention for up to 10 days in local police facilities;

(g) The lack, in many instances, of prompt and adequate access of persons in police custody or remand centres to independent counsel and a medical doctor, which is an important safeguard against torture; many persons in police custody are reportedly forced to renounce their right to a lawyer, and medical experts are provided only on the order of an official and not at the request of the detainee;

(h) The fact that, despite the recommendation of the Special Rapporteur on torture, the remand centre of the Ministry of National Security continues to operate and that it remains under the jurisdiction of the same authorities that conduct the pre-trial investigation;

(i) Reports of harassment and attacks against human rights defenders and organizations;

(j) The particularly strict regime applied to prisoners serving life sentences;

(k) Reports that the ability of detained persons to lodge a complaint is unduly limited by censorship of correspondence and by the failure of the authorities to ensure the protection of the complainants from reprisals;

(l) The reported failure of the State party to provide prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment, as well as insufficient efforts to prosecute alleged offenders;

(m) The fact that no independent body with a mandate to visit and/or supervise places of detention has been established, and that access by non-governmental organizations to penitentiary facilities is impeded;

(n) The fact that very few victims have obtained compensation;

(o) Reports that, in many instances, judges refuse to deal with visible evidence of torture and ill-treatment of detainees and do not order independent medical examinations or return cases for further investigation.

### D. Recommendations

89. **The Committee recommends that the State party:**

**(a) Ensure that the offence of torture in national legislation fully complies with the definition provided in article 1 of the Convention;**

**(b) Guarantee that, in practice, persons cannot be held in initial preventive detention (police custody) longer than 48 hours, and eliminate the possibility of holding persons in temporary detention in local police facilities for a period of up to 10 days;**

**(c) Clearly instruct police officers, investigative authorities and remand centre personnel that they must respect the right of detained persons to obtain access to a lawyer immediately following detention and a medical doctor on the request of the detainee, and not only after the written consent of detaining authorities has been obtained. The State party should ensure the full independence of medical experts;**

**(d) Transfer the remand centre of the Ministry of National Security to the authority of the Ministry of Justice, or discontinue its use;**

**(e) Fully ensure the independence of the judiciary, in accordance with the Basic Principles on the Independence of the Judiciary;**

**(f) Ensure the prompt creation of the new bar association and take measures to guarantee an adequate number of qualified and independent lawyers able to act in criminal cases;**

**(g) Ensure the full independence of the Ombudsman;**

**(h) Ensure the full protection of non-governmental human rights defenders and organizations;**

**(i) Ensure that all persons have the right to review of any decision about his/her extradition to a country where he/she faces a real risk of torture;**

**(j) Intensify efforts to educate and train police, prison staff, law enforcement personnel, judges and doctors on their obligations to protect from torture and ill-treatment all individuals who are in State custody. It is particularly important to train medical personnel to detect signs of torture or ill-treatment and to document such acts;**

**(k) Ensure the right of detainees to lodge a complaint by ensuring their access to an independent lawyer, by reviewing rules on censorship of correspondence and by guaranteeing in practice that complainants will be free from reprisals;**

**(l) Review the treatment of persons serving life sentences to ensure that it is in accordance with the Convention;**

**(m) Institute a system of regular and independent inspections of all places of detention and facilitate in practice, including by issuing instructions to appropriate authorities, access by non-governmental organizations to these places of detention;**

**(n) Ensure that prompt, impartial and full investigations into all allegations of torture and ill-treatment are carried out and establish an independent body with the authority to receive and investigate all complaints of torture and other ill-treatment by officials. The State party should also ensure that the Presidential Decree of 10 March 2000 is implemented in this respect;**

**(o) Ensure that in practice, redress, compensation and rehabilitation are guaranteed to victims of torture;**

**(p) Widely disseminate in the country the reports submitted to the Committee, the conclusions and recommendations of the Committee, as well as the summary records of the review, in appropriate languages.**

90. **The Committee requests the State party to provide in its next periodic report:**

**(a) Detailed information, including statistical data, on the practical implementation of its legislation and the recommendations of the Committee, in particular regarding the rights of persons in police custody and pre-trial detention, the implementation of the 1998 Compensation Act or other relevant legislation, the implementation of article 3 of the Convention, and the mandate and activities of the Ombudsman;**

**(b) Detailed statistical data, disaggregated by crime, geographical location, ethnicity and gender, of complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences.**

91. **The Committee welcomes the assurances given by the delegation that complementary written information will be submitted regarding the questions that remained unanswered.**

92. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 89 (c), (f), (h), (i) and (n) above.**

## CAMBODIA[11]

93. The Committee considered the initial report of Cambodia (CAT/C/21/Add.5) at its 548th meeting (CAT/C/SR.548), on 29 April 2003, and adopted the following provisional conclusions and recommendations.[12]

### A. Introduction

94. The Committee welcomes the initial report of Cambodia and notes that it generally conforms to the Committee's reporting guidelines. It regrets, however, the nine-year delay in its submission and the paucity of information on the practical enjoyment in Cambodia of the rights enshrined in the Convention.

95. The Committee regrets the absence of a delegation from the State party able to enter into a dialogue with it, and notes that the examination of the report took place in accordance with rule 66, paragraph 2 (b), of its rules of procedure. The Committee looks forward to receiving written responses to the questions and comments of its members and urges the State party, in the future, to comply fully with its obligations under article 19 of the Convention.

### B. Positive aspects

96. The Committee welcomes the following:

(a) The State party's expression of willingness to continue undertaking legal reforms in order to fulfil its international obligations in the field of human rights;

(b) The State party's cooperation with United Nations agencies and mechanisms in the field of human rights. In this regard, the Committee welcomes the cooperation with the United Nations human rights field presence in the country and the training and educational activities on human rights provided by international organizations to law enforcement personnel, as well as the positive role played by NGOs in this regard.

### C. Factors and difficulties impeding the application of the Convention

97. The Committee acknowledges the difficulties encountered by Cambodia during its political and economic transition, including lack of judicial infrastructure and budgetary constraints.

### D. Subjects of concern

98. The Committee is concerned about the following:

(a) The numerous, ongoing and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel in police stations and prisons;

(b) Allegations regarding the expulsion of foreigners that seem to have occurred without taking into consideration the safeguards contained in article 3 of the Convention and, in particular, the situation of large numbers of Montagnard asylum-seekers in the Cambodian-Vietnamese border area;

(c) The absence in the domestic penal law of a clear prohibition of torture, although the Committee notes the State party's indication that it prohibits torture and has adopted the definition of torture contained in the Convention;

(d) Impunity for past and present violations of human rights committed by law enforcement officials and members of the armed forces and, in particular, the failure of the State party to investigate acts of torture and other cruel, inhuman or degrading treatment or punishment and to punish the perpetrators;

(e) The allegations of widespread corruption amongst public officials in the criminal justice system;

(f) The absence of an independent body competent to deal with complaints against the police;

(g) The ineffective functioning of the criminal justice system, in particular the lack of independence of the judiciary as well as its inefficiency;

(h) The importance given to confessions in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;

(i) The unwarranted protraction of the pre-trial detention period during which detainees are more likely to be subjected to torture and other ill-treatment;

(j) The use of incommunicado detention for 48 hours, at least, before a person is brought before a judge, during which the detainee has no access to legal counsel or to his/her relatives. Furthermore, recent legal amendments allow the police to extend this period;

(k) The lack of access by detainees in general to legal counsel and a medical doctor of their choice;

(l) The overcrowding and poor conditions in prisons, as well as alleged cases of ill-treatment of prisoners, and the difficulties faced by international organizations, NGOs and family members in gaining access to prisoners.

### D. Recommendations

99. **The Committee recommends that the State party:**

**(a) Incorporate in its domestic law the definition of torture set out in article 1 of the Convention and characterize acts of torture as a specific crime, punishable by appropriate sanctions;**

**(b) Take effective measures to establish and ensure a fully independent and professional judiciary in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary, if necessary by calling for international cooperation;**

**(c)** Ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of the perpetrators;

**(d)** Establish an independent body competent to deal with complaints against the police and other law enforcement personnel;

**(e)** Take all the necessary measures to ensure that the requirement of article 3 of the Convention is taken into consideration when deciding on the expulsion, return or extradition of foreigners;

**(f)** Take measures to ensure that evidence obtained under torture is not invoked in court;

**(g)** Take all the necessary measures to guarantee access to justice for all the people of Cambodia, particularly the poor and the inhabitants of rural and remote areas of the country;

**(h)** Undertake all necessary measures to guarantee to any person deprived of his or her liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the State's expense;

**(i)** Take urgent measures to improve conditions of detention in police stations and prisons. It should, moreover, increase its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned. In this connection, the State party should consider signing and ratifying the Optional Protocol to the Convention;

**(j)** Reinforce human rights education and promotion activities in general, and regarding the prohibition of torture in particular, for law enforcement officials and medical personnel, and introduce training in these subjects in official education programmes;

**(k)** Take measures to regulate and institutionalize the right of victims of torture to fair and adequate compensation and to establish programmes for their physical and mental rehabilitation;

**(l)** Ensure that the reported practice of unlawful trafficking of persons is suppressed;

**(m)** Provide data on: (a) the number of persons held in prisons and places of detention, disaggregated by age, gender, ethnicity, geography and type of crime; (b) the number, types and results of cases, both disciplinary and criminal, of police and other law enforcement personnel accused of torture and related offences;

**(n)** Ensure the wide distribution of these conclusions and recommendations throughout Cambodia, in all the major languages.

100. **The Committee requests the State party to provide responses to the questions asked by its members and to the issues raised in the present provisional conclusions and recommendations by 31 August 2003.**

## ICELAND[13]

101. The Committee considered the second periodic report of Iceland (CAT/C/59/Add.2) at its 552nd, 555th and 568th meetings (CAT/C/SR.552, 555 and 568), held on 1, 2 and 13 May 2003, and adopted the following conclusions and recommendations.

### A. Introduction

102. The Committee welcomes the second periodic report of Iceland, which was submitted on time and conforms fully with the guidelines of the Committee for the preparation of States parties' periodic reports. The Committee thanks the Government of Iceland and its delegation for the genuine cooperation and constructive dialogue.

### B. Positive aspects

103. The Committee notes with satisfaction that it did not receive any complaint of torture having taken place in Iceland.

104. The Committee welcomes the following developments: (a) the new Act on Protection of Children, No. 80/2000, which offers greater protection to children; (b) the new Act on Foreigners, No. 96/2002, which gives foreigners greater protection; (c) the amendments to the Police Act, which provides for allegations that an offence has been committed by a member of the police force to be submitted directly to the General Prosecutor for investigation.

105. The Committee notes with satisfaction that remand prisoners who are kept in solitary confinement have the right to have the decision to so confine them reviewed by a court and that they must be informed of the existence of this right.

106. The Committee welcomes the fact that its previous conclusions and recommendations were translated into Icelandic language and widely disseminated.

### C. Subjects of concern

107. The Committee is still concerned by the fact that Icelandic law does not contain specific provisions ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, as required by article 15 of the Convention.

108. The Committee is also concerned at the problem of inter-prisoner violence (in Litla Hraun State Prison) which has created fear among certain categories of prisoners, leading, inter alia, to requests to be placed voluntarily in solitary confinement.

### D. Recommendations

109. **The Committee urges the State party to reconsider its previous recommendations, namely:**

**(a) The recommendation that torture be defined as a specific offence in Icelandic law;**

**(b) The recommendation that legislation concerning evidence to be adduced in judicial proceedings be brought into line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.**

110. **The Committee also recommends that:**

**(a) Doctors who are in contact with persons subjected to any form of arrest, detention or imprisonment be trained to recognize the sequelae of torture and in the rehabilitation of victims of torture or maltreatment;**

**(b) The State party continue to address issues of inter-prisoner violence by actively monitoring such violence and ensuring that prison staff are trained and able to intervene appropriately;**

**(c) Information on the investigation of the cases of suicide in prison, along with any guidelines for suicide prevention adopted in this regard, be included in Iceland's next periodic report.**

## SLOVENIA[14]

111. The Committee considered the second periodic report of Slovenia (CAT/C/43/Add.4) at its 356th and 359th meetings (CAT/C/SR.356 and 359), held on 5 and 6 May 2003, and adopted the following conclusions and recommendations.

### A. Introduction

112. The Committee welcomes the timely submission of the second periodic report of Slovenia in accordance with the Committee's request, and the opportunity to continue its dialogue with the State party.

113. While noting that the report covers the period from May 2000 to March 2001, the Committee appreciates the update provided by the delegation of Slovenia during the consideration of the report and the detailed answers to the questions raised by the Committee.

### B. Positive aspects

114. The Committee welcomes the ongoing efforts by the State party to reform its legal system and revise its legislation so as to strengthen human rights in Slovenia. In particular, the Committee welcomes:

(a) The inclusion in the State party's report of findings of the Human Rights Ombudsman of Slovenia, which were often critical of the Government, and notes the important role of this institution in the promotion and protection of human rights in the State party;

(b) The decision of the Supreme Court adopted in December 2000, which limits the duration of remand in custody to two years;

(c) The Rules on Police Powers introduced in June 2000 which provide detailed regulations governing the limits of police powers in official contacts with individuals;

(d) The amendments to the Aliens Act and the Asylum Act, thereby bringing domestic legislation into line with article 3 of the Convention, as recommended by the Committee during the consideration of the initial report;

(e) The decision of the Government adopted in 2003, according to which all government ministries should cooperate closely with NGOs in the preparation of legislation and by-laws that touch upon human rights and freedoms in any way;

(f) The "Hercules" special programme conducted by the Supreme Court of Slovenia and introduced in 2001, aimed at reducing and eliminating court backlogs;

(g) Efforts undertaken by the State party in the sphere of educational and training activities in order to familiarize policemen and recruits participating in in-service training with international human rights standards, including the prevention of torture.

### C. Subjects of concern

115. The Committee expresses concern about the following:

(a) Substantive criminal law does not contain a specific crime of torture, which, although referred to in the Criminal Code, remains undefined;

(b) Torture is subject to a statute of limitation; the period of limitation pertaining to acts of ill-treatment other than torture is too short;

(c) Reports concerning the lack of an independent system to investigate complaints and allegations of ill-treatment promptly and impartially;

(d) Allegations of excessive use of force by the police, especially against members of ethnic minorities, continue. The Committee regrets the fact that disaggregated statistical data in this respect are not available from the State party;

(e) There is no adequate legal guarantee of the right of persons deprived of liberty to have access to a doctor of their choice from the outset of their custody. The Committee notes article 74 of the Rules on Police Powers that makes provision for medical assistance, but considers that this is not sufficient as a safeguard against ill-treatment and torture;

(f) There is no code of conduct for police interrogations to supplement the provisions of the Code of Criminal Procedure and the Police Act, with a view to preventing cases of torture and ill-treatment, as required by article 11 of the Convention;

(g) Overcrowding in prisons and other places of detention continues, despite the slight decrease noted in 2002.

### D. Recommendations

116. **The Committee recommends that the State party:**

**(a) Proceed promptly with plans to adopt a definition of torture which covers all the elements of that contained in article 1 of the Convention and amend its domestic penal law accordingly;**

**(b) Repeal the statute of limitation for torture and extend the limitation period for other types of ill-treatment;**

**(c) Take measures to establish an effective, reliable and independent complaints mechanism to undertake prompt and impartial investigations into allegations of ill-treatment or torture by police and other public officials and to punish the offenders;**

**(d) Strengthen existing efforts to reduce occurrences of ill-treatment by police and other public officials, in particular that which is ethnically motivated, and, while ensuring protection of individual privacy, devise modalities for collecting data and monitoring the occurrence of such acts in order to address the issue more effectively. The State party is encouraged to include such information in its third periodic report;**

**(e) Strengthen the safeguards provided in the Code of Criminal Procedure against ill-treatment and torture and ensure that, in law as well as in practice, all persons deprived of their liberty are guaranteed the right to have access to an independent doctor. Privacy of medical examinations should be ensured;**

**(f) Continue efforts to address overcrowding in prisons and other places of detention in accordance with, inter alia, the recommendation in this respect made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its report on Slovenia (CPT/Inf(2002)36);**

**(g) Widely disseminate the reports submitted by Slovenia to the Committee and the conclusions and recommendations, in appropriate languages, through official web sites, the media and non-governmental organizations.**

## TURKEY[15]

117. The Committee considered the second periodic report of Turkey (CAT/C/20/Add.8) at its 545th and 548th meetings (CAT/C/SR.545 and 548), held on 2 and 5 May 2003, and adopted the following conclusions and recommendations.

### A. Introduction

118. The Committee welcomes the second periodic report of Turkey, which outlines the new measures and developments relating to the implementation of the Convention that have taken

place in the State party since its submission of the initial report in 1990. It also welcomes the updated and detailed information as well as the extensive responses provided by the delegation of the State party.

119. The Committee nevertheless regrets the long delay in the submission of the report, which was overdue by eight years.

### B. Positive aspects

120. The Committee welcomes the following positive aspects:

(a) The abolition of the death penalty for peacetime offences;

(b) The lifting of the long-standing state of emergency;

(c) The constitutional and legal reforms intended to strengthen the rule of law and to bring the legislation into line with the Convention, including the reduction of periods of detention in police custody; the elimination of the requirement to obtain administrative permission to prosecute a civil servant or public official; and the decrease in the number of crimes under the jurisdiction of State Security Courts;

(d) The inclusion in domestic legislation of the principle that evidence obtained through torture shall not be invoked as evidence in any proceedings;

(e) The establishment of Prison Monitoring Boards that include the participation of members of non-governmental organizations in their individual capacity, with a mandate to carry out inspections in penal institutions;

(f) The bill submitted to Parliament concerning the establishment of the Ombudsman institution;

(g) The acceptance, in a spirit of cooperation, by the State party of visits by monitoring bodies such as the special rapporteurs of the United Nations Commission on Human Rights and the release to the public of reports of CPT.

### C. Subjects of concern

121. The Committee expresses concern about:

(a) Numerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody are apparently still widespread in Turkey;

(b) The failure by police always to comply with the safeguards concerning the registration of detainees;

(c) Allegations that persons in police custody have been denied prompt and adequate access to legal and medical assistance and that family members have not been promptly notified of their detention;

(d) Allegations that despite the number of complaints, the prosecution and punishment of members of security forces for torture and ill-treatment are rare, proceedings are exceedingly long, sentences are not commensurate with the gravity of the crime, and officers accused of torture are rarely suspended from duty during the investigation;

(e) The importance given to confessions in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;

(f) The alarming problems in prisons as a result of the introduction of the so-called "F-type prisons" which have led to hunger strikes causing the deaths of more than 60 inmates;

(g) The State party's failure to comply fully with judgements of the European Court of Human Rights ordering the payment of just compensation.

122. The Committee is also concerned about:

(a) The lack of training of medical personnel dealing with detainees in matters relating to the prohibition of torture;

(b) Allegations according to which the expulsion of illegal aliens to their country of origin or to neighbouring countries is often accompanied by ill-treatment, in violation of the safeguards contained in article 3 of the Convention;

(c) The continuing reports of harassment and persecution of human rights defenders and non-governmental organizations.

### D. Recommendations

123. **The Committee recommends that the State party:**

**(a) Ensure that detainees, including those held for offences under the jurisdiction of State Security Courts, benefit fully in practice from the available safeguards against ill-treatment and torture, particularly by guaranteeing their right to medical and legal assistance and to contact with their families;**

**(b) Take the necessary measures to guarantee that prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment are carried out, and to ensure in this connection that an efficient and transparent complaint system exists;**

**(c) Repeal the statute of limitation for crimes involving torture, expedite the trials and appeals of public officials indicted for torture or ill-treatment, and ensure that members of the security forces under investigation or on trial for torture or ill-treatment are suspended from duty during the investigation and dismissed if they are convicted;**

**(d) Ensure that ongoing inspections of prisons and places of detention by judges, prosecutors or other independent bodies (such as prison monitoring boards) continue to take place at regular intervals and that appropriate action is taken by the responsible authorities in response to the inspection reports and recommendations;**

**(e) Guarantee that the detention records of detainees in police custody are properly kept from the outset of the custody period, including for the times they are removed from their cells, and that such records are made accessible to their families and lawyers;**

**(f) Solve the current problems in prisons generated by the introduction of "F-type prisons" by implementing the recommendations of CPT and by entering into serious dialogue with those inmates continuing hunger strikes;**

**(g) Review the current legislation and practice in order to ensure that the expulsion of irregular aliens is carried out with full respect for the legal guarantees required by international human rights standards, including the Convention;**

**(h) Ensure that fair and adequate compensation, including financial indemnification, rehabilitation, and medical and psychological treatment are provided to the victims of torture and ill-treatment;**

**(i) Ensure that human rights defenders and non-governmental organizations are respected, together with their premises and archives;**

**(j) Include the prevention of torture in the Human Rights Education Programme of Turkey (1998-2007) and ensure that all the new developments in legislation are made widely known to all public authorities;**

**(k) Intensify training of medical personnel with regard to the obligations set out in the Convention, in particular in the detection of signs of torture or ill-treatment and the preparation of forensic reports in accordance with the Istanbul Protocol;**

**(l) Provide in the next periodic report detailed statistical data, disaggregated by crime, region, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences;**

**(m) Provide in the next periodic report information on the implementation of the "Return to Village Programme" regarding internally displaced persons;**

**(n) Disseminate the Committee's conclusions and recommendations widely in the State party in all appropriate languages.**

124. **The State party is invited to submit its next periodic report, which will be considered as the third, by 31 August 2005.**

## BELGIUM[16]

125. The Committee considered the initial report of Belgium (CAT/C/52/Add.2) at its 558th, 561st, 562nd and 569th meetings, held on 6, 7, 8 and 14 May 2003 (CAT/C/SR.558, 561, 562 and 569), and adopted the following conclusions and recommendations.

## A. Introduction

126. The Committee welcomes with satisfaction the initial report of Belgium, which does not, however, contain enough information on the practical implementation of the Convention and the difficulties encountered in that regard.

127. The Committee welcomes the presence of a delegation composed of high-level experts, who replied fully and frankly to the many questions asked. The Committee welcomes with great satisfaction the very high quality of the ensuing dialogue.

## B. Positive aspects

128. The Committee notes with satisfaction the following elements:

(a) The ratification of the Convention without reservations and the recognition of the Committee's competence to consider inter-State and individual complaints (arts. 21 and 22);

(b) The adoption on 14 June 2002 of the Act bringing Belgian law into line with the Convention and introducing in the Penal Code articles on torture and inhuman or degrading treatment stating that an order by a superior cannot justify the offences of torture or inhuman treatment;

(c) The adoption on 18 July 2001 of an article in the Code of Penal Procedure recognizing the competence of Belgian courts to try offences committed outside Belgium which are covered by an international convention which is binding on Belgium;

(d) The establishment in 1991 of the Standing Committee on the Supervision of the Police Services (P Committee), under parliamentary authority, and the subsequent strengthening of its powers;

(e) The repeal in 1999 of article 53 of the Act of 8 April 1965 allowing minors to be placed in detention centres for a period of not more than 15 days, and the efforts being made by the Flemish and French communities to solve problems of overcrowding in specialized establishments for juvenile delinquents.

## C. Subjects of concern

129. The Committee is concerned about:

(a) The lack of explanations concerning the concept of a "manifestly unlawful order" and the fact that an official having subjected a person to degrading treatment may be relieved of criminal responsibility under article 70 of the Penal Code if he or she was following the order of a superior;

(b) The lack of a legal provision clearly prohibiting the invocation of a state of necessity as a justification of torture;

(c) Cases of the excessive use of force during public demonstrations and expulsions of foreigners;

(d) The fact that foreigners who have been resident in Belgium for a long time but who have disturbed public order or endangered national security may be expelled from the territory, even though most of their ties and attachments are in Belgium;

(e) The non-suspensive nature of appeals filed with the Council of State by persons in respect of whom an expulsion order has been issued. The Committee is also concerned about the administration's delay in implementing ministerial orders issued in 2002 and giving suspensive effect to emergency remedies applied for by rejected asylum-seekers;

(f) The possibility of extending the detention of foreigners for as long as they do not cooperate in their repatriation, the possibility of placing unaccompanied minors in detention for lengthy periods, and information that asylum-seekers who have been formally released have been transferred to the transit area of the national airport, without assistance and without being allowed to leave;

(g) The reform on 23 April 2003 of the rules governing the exercise of universal jurisdiction by Belgian courts in cases involving serious violations of international humanitarian law, authorizing the Minister of Justice in some circumstances to remove a Belgian judge from a case;

(h) The lack of legislation on the rights of persons under judicial or administrative arrest to have access to a lawyer, to inform their family of their detention, to be clearly informed of their rights and to be examined by a doctor of their choice;

(i) The lack of an exhaustive list of disciplinary offences in prisons and of any effective remedy for detainees against disciplinary decisions taken against them;

(j) Prison violence;

(k) Information on the lack of access to medical care in prisons, including psychiatric and psychological care, particularly as a result of the lack of qualified and available staff;

(l) The possibility of ordering the isolation of juvenile delinquents aged 12 years and over, for up to 17 days;

(m) The poor functioning of the administrative commissions, which are internal prison monitoring bodies;

(n) The lack of training for prison administrative staff, including medical staff, in particular on the prohibition of torture and inhuman or degrading treatment, owing especially to the lack of resources earmarked for that purpose;

(o) The fact that rules on the exclusion of evidence obtained as a result of torture have emerged only from the decisions of the courts, and that judges seem to retain discretionary power in that regard.

## D. Recommendations

130. **While the Committee welcomes the decision of the Belgian authorities to extend the definition of torture and inhuman or degrading treatment to the commission of such acts by non-State actors, even those acting without the consent of a State agent, it recommends that the Belgian authorities ensure that all elements of the definition contained in article 1 of the Convention are included in the general definition provided by Belgian criminal law.**

131. **The Committee recommends that the State party:**

**(a) Ensure that officials who have subjected any person to degrading treatment are liable to criminal penalties, even though they may have acted on the order of a superior, and explain the concept of a "manifestly unlawful order";**

**(b) Include a provision in the Penal Code expressly prohibiting the invocation of a state of necessity to justify the violation of the right not to be subjected to torture;**

**(c) Ensure that the guidelines on the use of force during public demonstrations and expulsions of foreigners are fully in keeping with the requirements of the Convention, guarantee their full implementation and conduct immediate inquiries into any allegations of the excessive use of force by law enforcement officials;**

**(d) Give suspensive effect not only to emergency remedies applied for but also to appeals filed by any foreigner against whom an expulsion order is issued and who claims that he or she faces the risk of being subjected to torture in the country to which he or she is to be returned;**

**(e) Set a time limit for the detention of foreigners against whom an expulsion order is issued, draft specific legislation on unaccompanied minors that takes account of the best interests of the child, and monitor asylum-seekers who have been released;**

**(f) Ensure respect for the principle of the independence of Belgian courts from the executive branch, in particular where the exercise of universal jurisdiction in relation to serious violations of international humanitarian law is concerned;**

**(g) Expressly guarantee in national legislation the right of all persons who are judicially or administratively detained to have access to a lawyer and a doctor of their choice immediately following their arrest, to be informed of their rights in a language they understand and to inform their families promptly of their detention;**

**(h) Urgently modernize its prison law, particularly by defining the legal status of detainees, explaining the prison disciplinary regime and guaranteeing the right of detainees to institute proceedings and obtain effective remedies against unwarranted disciplinary penalties through an independent and promptly accessible body;**

**(i) Combat prison violence more effectively;**

**(j) Improve the system of access to health care in prisons by recruiting more qualified medical staff;**

**(k) Ensure that the isolation of juvenile delinquents is imposed only in entirely exceptional cases, and for a limited period;**

**(l) Improve the system of prison supervision by ensuring the prompt replacement of the administrative commissions by more effective bodies, as planned, and by considering the possibility of allowing non-governmental organizations to visit prisons regularly and meet detainees;**

**(m) Guarantee the training of prison administrative staff, including medical staff, in the prohibition of torture and inhuman or degrading treatment;**

**(n) Clearly state in national legislation that evidence obtained under torture is automatically inadmissible and must therefore not be submitted for consideration by the court itself.**

132. **The Committee recommends that the present conclusions and recommendations and the summary records of the meetings at which the State party's initial report was considered be widely disseminated in the country in the appropriate languages.**

133. **The Committee recommends that Belgium's next periodic report contain detailed information on the practical implementation of the Convention and all of the points raised in the present conclusions, in particular detailed information, including statistics, on the functioning and effectiveness of the prison supervision system, prison violence and the effectiveness of the measures taken in that regard. The Committee wishes to receive information on the number and age of juvenile delinquents placed in isolation, the average length of their detention in isolation and the reasons for the penalties imposed on them.**

## REPUBLIC OF MOLDOVA[17]

134. The Committee considered the initial report of the Republic of Moldova (CAT/C/32/Add.4) at its 563rd and 565th meetings (CAT/C/SR.563 and 565), on 8 and 9 May 2003, and adopted the following conclusions and recommendations.

### A. Introduction

135. The Committee welcomes the initial report of the Republic of Moldova, although it regrets the nearly five-year delay in the submission of the report and the paucity of information on the practical enjoyment in the State party of the rights guaranteed by the Convention.

136. While taking into account the inability of the State party's delegation to arrive on time for the examination of the report owing to force majeure, the Committee notes with disappointment that most of its questions remained unanswered and reminds the State party of its request to receive further information in writing.

### B. Positive aspects

137. The Committee welcomes the following positive aspects:

(a) The indications given by the State party's delegation that the new Criminal Code will provide a legal framework for more humane treatment of detainees;

(b) The fact that the State party has agreed to publicize the reports and responses resulting from the visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Furthermore, the State party has established a specialized Standing Coordinating Committee in regard to the matters dealt with by CPT;

(c) The efforts of the Moldovan authorities to improve prison conditions, inter alia by removing 89 per cent of the metal shutters which covered cell windows in remand prisons, increasing efforts regarding the treatment of tuberculosis patients and increasing employment offers for detainees;

(d) The acceptance of article 20 of the Convention.

### C. Subjects of concern

138. The Committee expresses concern about:

(a) The numerous and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment of detainees in police custody;

(b) The reported lack of prompt and adequate access by persons in police custody to legal and medical assistance, and to family members;

(c) The deletion in the new Criminal Code of the definition of torture, which was in conformity with that of the Convention;

(d) Administrative police detention in temporary holding facilities under the jurisdiction of the Ministry of the Interior;

(e) The reported failure of the State party to ensure prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment, thereby contributing to a culture of impunity among law enforcement officials;

(f) The absence of an independent oversight mechanism competent to deal with complaints against the police;

(g) The lack of judicial supervision of temporary holding facilities that are under the jurisdiction of the Ministry of the Interior;

(h) Allegations of a dysfunctional criminal justice system, apparently caused in part by a lack of independence of the procuracy and the judiciary;

(i) Allegations concerning the heavy emphasis put on confessions as a primary source of evidence in criminal proceedings;

(j) Reports alleging that immigrants are apparently being detained in poor conditions in temporary holding facilities;

(k) Allegations regarding the expulsion of aliens that seem to occur without taking into consideration the safeguards contained in article 3 of the Convention;

(l) The poor material conditions prevailing in police detention facilities and prisons and the lack of independent inspections of such places. The Committee expresses particular concern at reports alleging that juveniles are in some cases held together with adults where they lack education and meaningful activities;

(m) The lack of training in the prevention of torture of law enforcement personnel, including doctors dealing with persons deprived of their liberty.

## D. Recommendations

139. **The Committee recommends that the State party:**

**(a) Ensure that the fundamental safeguards against torture and ill-treatment of detainees, including those held for administrative offences, are available in practice, including their right to medical assistance and legal counsel and to contact with their families from the earliest stages of their detention;**

**(b) Incorporate in the new Criminal Code a definition of torture as a separate crime that is in conformity with article 1 of the Convention;**

**(c) Ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities, the prosecution and punishment of the perpetrators, as appropriate, and the provision of just compensation for the victims;**

**(d) Discontinue the practice of administrative police detention;**

**(e) Establish an independent administrative body competent to deal with complaints against the police and law enforcement personnel;**

**(f) Take effective measures to ensure a fully independent procuracy and an independent judiciary in conformity with the United Nations Basic Principles on the Independence of the Judiciary, if necessary by calling for international cooperation;**

**(g) Take measures to ensure that evidence obtained under torture is not invoked in court;**

**(h) Take measures to ensure that the requirement of article 3 of the Convention is taken into consideration when deciding on the expulsion, return or extradition of aliens;**

**(i) Transfer the responsibility of detained persons in temporary holding facilities from the Ministry of the Interior to the Ministry of Justice;**

**(j) Issue directives on the proper conduct of interrogations of persons in police custody, including the total prohibition of ill-treatment and torture;**

**(k) Provide an information sheet in the appropriate languages in all police stations to inform all detainees of all their rights immediately after their arrest;**

**(l) Improve the conditions of detention in police stations and prisons so as to bring them into conformity with article 16 of the Convention, and establish an independent and systematic system to monitor the treatment in practice of persons arrested, detained or imprisoned;**

**(m) Reinforce human rights education and promotion activities regarding the prohibition of torture, particularly for law enforcement and medical personnel, and introduce training in these subjects in official education programmes;**

**(n) Provide in the next periodic report detailed statistical data, disaggregated by crime, region, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions and disciplinary sentences and redress offered to victims;**

**(o) Disseminate the Committee's conclusions and recommendations widely in the State party in all appropriate languages.**

140. **The Committee requests the State party to provide responses to the questions asked by its members by 31 August 2003.**

141. **The State party is invited to submit its next periodic report, which will be considered as the second, by 27 December 2004.**

## IV. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

### A. General information

142. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

143. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

144. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

145. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

146. However, in accordance with article 20, paragraph 5 of the Convention, the Committee may after consultations with the State party concerned decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly. Such a summary account is herewith provided in connection with Mexico.

## B. Summary account of the results of the proceedings concerning the inquiry on Mexico

147. Mexico ratified the Convention on 23 January 1986. At the time of ratification it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention. Accordingly, the procedure under article 20 is applicable to Mexico.

148. In October 1998, the Committee received from the Human Rights Centre Miguel Agustín Pro-Juárez (PRODH), a non-governmental organization based in Mexico City, a report entitled "Torture: Institutionalized Violence in Mexico, April 1997-September 1998". The report contained an appeal to the Committee to undertake an investigation pursuant to article 20 of the Convention. Upon examination, the Committee considered that the information submitted by PRODH was reliable and contained well-founded indications that torture was being systematically practised in Mexico. In accordance with article 20, paragraph 1, of the Convention and rule 76 of its rules of procedure, the Committee requested the Government of Mexico to cooperate in the examination of, and comment on the information in question.

149. During its twenty-second session (May 1999), the Committee designated two of its members, Alejandro González Poblete and Antonio Silva Henriques Gaspar, to examine the Government's reply. Following their examination the Committee decided, at the same session, to undertake a confidential inquiry in accordance with article 20, paragraph 2, of the Convention and rule 78 of its rules of procedure, and designated the two above-mentioned members for the purpose. It also decided to invite the Government of Mexico, in accordance with article 20, paragraph 3, of the Convention and rule 79 of its rules of procedure, to cooperate with the Committee in the conduct of the inquiry. Lastly, it decided to request the Government of Mexico, pursuant to article 20, paragraph 3, of the Convention and rule 80 of its rules of procedure, to agree to a visit to the country by Committee members.

150. On 30 January 2001, the Government invited the Committee members to visit the country. The visit took place from 23 August to 12 September 2001. The Committee had in the interim designated Ole Vedel Rasmussen to be a third member of the visiting team. In the end, Silva Henriques Gaspar was prevented by personal reasons from taking part in the visit.

151. The two designated members submitted their report at the twenty-eighth session of the Committee (April/May 2002). They noted that the number of complaints of torture referred to Mexican public human rights bodies and NGOs appeared to have declined. However, the information collected in the course of the procedure under article 20, which had not been refuted by the Government; the description of the torture cases reported to them, mainly by the victims themselves; the similarity of circumstances in which the cases occurred; the purpose of the torture, which was nearly always to obtain information or a self-incriminating confession; the similarity of the methods employed; and the fact that such methods were widespread all

convinced the Committee members that these were not exceptional situations or occasional violations committed by a few police officers. On the contrary, the police commonly used torture and resorted to it on a systematic basis as a method of criminal investigation, readily available whenever required in order to advance the procedure.

152. The Committee endorsed the report of the two members and, in accordance with article 20, paragraph 4, of the Convention, decided to transmit it to the Government of Mexico. At the same time, the Committee invited the Government to inform it of the action taken with regard to its findings and in response to its conclusions and recommendations.

153. On 31 August 2002, the Government submitted the information requested, whereby it reiterated its commitment to the implementation of the Convention and the importance it attached to the conclusions and recommendations of the Committee. It also promised to analyse them carefully with a view to adopting policies and actions for their implementation. On 20 February 2003, the Government of Mexico informed the Committee that it agreed to the publication of the full text of the report together with the Government's response. At its thirtieth session the Committee decided to publish the report and the response. Both are contained in document CAT/C/75.

## V. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

154. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Fifty-one out of 133 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

155. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential.

156. Pursuant to rule 107 of the rules of procedure, with a view to reaching a decision on the admissibility of a complaint, the Committee, its working group, or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain: that the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention; that the complaint is not an abuse of the Committee's process or manifestly unfounded; that it is not incompatible with the provisions of the Convention; that the same matter has not been and is not being examined under another procedure of international investigation or settlement; that the complainant has exhausted all available domestic remedies and that the time elapsed since the exhaustion of domestic remedies is not unreasonably prolonged as to render consideration of the claims unduly difficult for the Committee or the State party.

157. Pursuant to rule 109 of the rules of procedure, a complaint shall be transmitted as soon as possible after registration to the State party, requesting a written reply within six months. Unless the Committee, the working group or a rapporteur decide, because of the exceptional nature of the case, to request a reply only in respect of the question of admissibility, the State party shall include in its reply explanations or statements relating both to the admissibility and the merits of the complaint, as well as to any remedy that may have been provided. A State party may apply, within two months, for the complaint to be rejected as inadmissible. The Committee, or the Rapporteur for new complaints and interim measures, may agree or refuse to split consideration of admissibility from that of the merits. Following a separate decision on admissibility, the Committee sets the deadline for submissions on a case-by-case basis. The Committee, its working group or rapporteur(s) may request the State party concerned or the complainant to submit additional written information, clarifications or observations, and shall indicate a time limit for their submission. Within such time limit as indicated by the Committee, its working group or rapporteur(s), the State party or the complainant may be afforded an opportunity to comment on any submission received from the other party. Non-receipt of submissions or comments should not generally delay the consideration of the complaint, and the Committee or its working group may decide to consider the admissibility and/or merits in the light of available information.

158. The Committee concludes examination of a complaint by formulating a decision thereon in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the general public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public without disclosing the identity of the complainant, but identifying the State party concerned.

159. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the complaints examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

160. Finally, the Committee appointed Mr. El Masry as Rapporteur on follow-up to decisions adopted on merits, to replace Mr. González Poblete.

### A. Pre-sessional working group

161. At its twenty-ninth session, the Committee's pre-sessional working group met for five days, prior to the plenary session, to assist the Committee in its work under article 22. The following members participated in it: Mr. Camara, Mr. González Poblete, Mr. Mariño Menendez and Mr. Yakovlev. Prior to the thirtieth session, the working group met for three days with the same purpose. It was composed of Mr. El Masry, Mr. Mariño Menendez, Mr. Yakovlev and Mr. Yu Mengjia.

### B. Interim measures of protection

162. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition where they allege violation of article 3 of the Convention. Pursuant to rule 108 of the rules of procedure, at any time after the receipt of a complaint, the

Committee, its working group, or the Rapporteur for new complaints and interim measures may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures monitors compliance with the Committee's requests for interim measures. The State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the interim measures should be lifted. The Rapporteur, the Committee or its working group may withdraw the request for interim measures.

163. During the reporting period, the Rapporteur for new complaints and interim measures further elaborated the working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures is susceptible to review prior to consideration of the merits, a standard sentence should be added to such a request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant.

164. In conformity with this approach, the Committee, through its Rapporteur for new complaints and interim measures, decided to withdraw a request for interim measures for the first time in January 2003 (see complaint No. 219/2002, *G.K. v. Switzerland*, text reproduced in annex VI, section A, to the present report).

165. During the period under review, the Rapporteur requested States parties to defer expulsion, deportation or extradition in a number of cases, so as to allow the Committee to consider the complaints under the Committee's procedure. All States parties so requested acceded to the Committee's requests for deferral. In five deportation/expulsion cases registered during the reporting period, the Rapporteur, after careful examination of the submissions, did not consider it necessary to request interim measures from the States parties concerned in order to avoid irreparable damage to the complainants upon return to their countries of origin.

## C. Progress of work

166. At the time of adoption of the present report, the Committee had registered 230 complaints with respect to 22 countries. Of them, 59 complaints had been discontinued and 39 had been declared inadmissible. The Committee had adopted final decisions on the merits with respect to 81 complaints and found violations of the Convention in 22 of them. Overall, 51 complaints remained pending for consideration.

167. At its twenty-ninth session, the Committee declared five complaints admissible, to be considered on their merits.

168. Also at its twenty-ninth session, the Committee adopted decisions on the merits in respect of complaints Nos. 119/1998 (*V.N.I.M. v. Canada*), 161/2000 (*Hajrizi Dzemajl et al. v. Yugoslavia*[18]), 193/2001 (*P.E. v. France*) and 204/2002 (*H.K.H. v. Sweden*). The text of these decisions is reproduced in annex VI, section A, to the present report.

169. In its decisions on complaints Nos. 119/1998 (*V.N.I.M. v. Canada*) and 204/2002 (*H.K.H. v. Sweden*), the Committee considered that the complainants had not substantiated their claims that they would risk being subjected to torture upon return to their countries of origin. The Committee therefore concluded in each case that the removal of the complainants to those countries would not breach article 3 of the Convention.

170. In its decision on complaint No. 193/2001 (*P.E. v. France*), the Committee found that the complainant's extradition to Spain did not amount to a violation of article 15 of the Convention, since it had not been established that the statement of a third person made before the Spanish police, and adduced as evidence in the complainant's extradition proceedings in France, had been made as a result of torture.

171. In its decision on complaint No. 161/2000 (*Hajrizi Dzemajl et al. v. Yugoslavia*), the Committee considered that the State party's failure to take appropriate steps to protect the complainants, all Yugoslav nationals of Roma origin, against the torching and destruction of their houses by non-Roma inhabitants, despite the fact that the police had been informed and were present at the site, amounted to "acquiescence" in the sense of article 16 of the Convention, which it considered to be violated. The State party's failure to prosecute the offenders and the police officers constituted a breach of article 12. Moreover, as the State party had failed to inform the complainants of its discontinuation of investigations, thereby depriving them of an opportunity to initiate private proceedings against those responsible, the Committee also found a violation of article 13. Although not expressly provided for in the Convention for victims of ill-treatment other than torture, the Committee considered that the State party's positive obligations under article 16 included a duty to provide the victims with fair and adequate compensation.

172. At its thirtieth session, the Committee decided to discontinue consideration of four complaints and to suspend consideration of two complaints. In addition, the Committee declared admissible two complaints, to be considered on their merits, and declared inadmissible complaint No. 216/2002 (*H.I.A. v. Sweden*) as manifestly ill-founded, since the complainant had failed to meet the basic level of substantiation of his claims, for purposes of admissibility. The text of this decision is reproduced in annex VI, section B, to the present report.

173. Also at its thirtieth session, the Committee adopted decisions on the merits in respect of complaints Nos. 190/2001 (*K.S.Y. v. The Netherlands*), 191/2001 (*S.S. v. The Netherlands*), 192/2001 (*B.H. et al. v. Switzerland*), 197/2002 (*U.S. v. Finland*), 198/2002 (*A.A. v. The Netherlands*), 201/2002 (*M.V. v. The Netherlands*), and 219/2002 (*G.K. v. Switzerland*). The text of these decisions is reproduced in annex VI, section A, to the present report.

174. In its decisions on complaints Nos. 192/2001 (*B.H. et al. v. Switzerland*), 198/2002 (*A.A. v. The Netherlands*) and 201/2002 (*M.V. v. The Netherlands*), the Committee considered that the complainants had not sufficiently substantiated their claim that they would risk being subjected to torture upon return to their countries of origin. The Committee therefore concluded in each case that the removal of the complainants to those countries would not breach article 3 of the Convention.

175. In respect of complaints Nos. 191/2001 (*S.S. v. The Netherlands*) and 197/2002 (*U.S. v. Finland*), the Committee found that the decision of the Dutch and Finish authorities to allow the deportation of the complainants to Sri Lanka did not breach the State party's obligation

under article 3 of the Convention not to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, given the improved human rights situation in Sri Lanka and because the torture allegedly suffered by the complainants in that country had not occurred in the recent past. The Committee also rejected the claim that a forcible return of the complainants to areas of the country controlled by the Liberation Tigers of Tamil Eelam would place them at risk of being subjected to torture by that organization, as such claim fell outside the scope of the definition of torture contained in article 1 of the Convention.

176. In its decision on complaint No. 190/2001 (*K.S.Y. v. The Netherlands*), the Committee found that the complainant, an Iranian national, had not sufficiently substantiated his claim that, because of his sexual orientation and the fact that he had been convicted by a Dutch court of having killed his partner, also an Iranian citizen, in the Netherlands, he would run a personal, present and foreseeable risk of being tortured if returned to his country of origin.

177. In its decision on complaint No. 219/2002 (*G.K. v. Switzerland*), the Committee considered that the complainant's extradition to Spain, where she had been indicted on counts of collaboration with Euzkadi Ta Askatasuna (ETA) (Basque Fatherland and Liberty) and storage of firearms and explosives, did not constitute a violation by the State party of its obligations under article 3 of the Convention, taking into account the legal guarantees she obtained during and following extradition proceedings. Moreover, the Committee found that the complainant's extradition to Spain was not in breach of article 15 of the Convention, since it had not been established that the statement of an ETA convict made before the Spanish police, on which the Spanish extradition request to the State party was allegedly based, had been made as a result of torture.

## VI. FUTURE MEETINGS OF THE COMMITTEE

178. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular sessions for the biennium 2004-2005. Those dates are the following:

| | |
|---|---|
| Thirty-second session | 3 to 21 May 2004 |
| Thirty-third session | 15 to 26 November 2004 |
| Thirty-fourth session | 2 to 21 May 2005 |
| Thirty-fifth session | 7 to 18 November 2005 |

179. The dates of the pre-sessional working groups for the same biennium will be as follows: 26 to 30 April 2004, 8 to 12 November 2004, 25 to 29 April 2005 and 31 October to 4 November 2005.

## VII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

180. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for appropriate transmission to the General Assembly during the same calendar year. Accordingly, at its 573rd meeting, held on 16 May 2003, the Committee considered and unanimously adopted the report on its activities at the twenty-ninth and thirtieth sessions.

### Notes

[1] Mr. Grossman is expected to assume his duties at the thirty-first session, in November 2003.

[2] A total of 164 reports.

[3] See paragraph 95 below.

[4] Also published as CAT/C/CR/29/1.

[5] Also published as CAT/C/CR/29/4.

[6] Also published as CAT/C/CR/29/5.

[7] Also published as CAT/C/CR/29/3.

[8] Also published as CAT/C/CR/29/2.

[9] The Committee therefore decided to consider document CAT/C/33/Add.5 as the second and third periodic reports of Venezuela.

[10] Also issued as CAT/C/CR/30/1.

[11] Also issued as CAT/C/CR/30/2.

[12] The Committee adopted these conclusions and recommendations provisionally in view of the fact that the Cambodian delegation, composed of a representative of the Permanent Mission of Cambodia to the United Nations Office at Geneva, indicated that it was not in a position to respond to the questions and comments made by the Committee. The Committee decided that it could revise the current text at its thirty-first session, in light of the written responses that the Government of Cambodia might provide. Only then would the conclusions and recommendations become final.

[13] Also issued as CAT/C/CR/30/3.

[14] Also issued as CAT/C/CR/30/4.

[15] Also issued as CAT/C/CR/30/5.

[16] Also issued as CAT/C/CR/30/6.

[17] Also issued as CAT/C/CR/30/7.

[18] On 10 February 2003, the name of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro.

## Annex I

### States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 16 May 2003

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Afghanistan | 4 February 1985 | 1 April 1987 |
| Albania | | 11 May 1984[a] |
| Algeria | 26 November 1985 | 12 September 1989 |
| Antigua and Barbuda | | 19 July 1993[a] |
| Argentina | 4 February 1985 | 24 September 1986 |
| Armenia | | 13 September 1993[a] |
| Australia | 10 December 1985 | 8 August 1989 |
| Austria | 14 March 1985 | 29 July 1987 |
| Azerbaijan | | 16 August 1996[a] |
| Bahrain | | 6 March 1998[a] |
| Bangladesh | | 5 October 1998[a] |
| Belarus | 19 December 1985 | 13 March 1987 |
| Belgium | 4 February 1985 | 25 June 1999 |
| Belize | | 17 March 1986[a] |
| Benin | | 12 March 1992[a] |
| Bolivia | 4 February 1985 | 12 April 1999 |
| Bosnia and Herzegovina | | 6 March 1992[b] |
| Botswana | 8 September 2000 | 8 September 2000 |
| Brazil | 23 September 1985 | 28 September 1989 |
| Bulgaria | 10 June 1986 | 16 December 1986 |
| Burkina Faso | | 4 January 1999[a] |
| Burundi | | 18 February 1993[a] |
| Cambodia | | 15 October 1992[a] |
| Cameroon | | 19 December 1986[a] |
| Canada | 23 August 1985 | 24 June 1987 |
| Cape Verde | | 4 June 1992[a] |
| Chad | | 9 June 1995[a] |
| Chile | 23 September 1987 | 30 September 1988 |
| China | 12 December 1986 | 4 October 1988 |
| Colombia | 10 April 1985 | 8 December 1987 |

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Comoros | 22 September 2000 | |
| Costa Rica | 4 February 1985 | 11 November 1993 |
| Côte d'Ivoire | | 18 December 1995[a] |
| Croatia | | 8 October 1991[b] |
| Cuba | 27 January 1986 | 17 May 1995 |
| Cyprus | 9 October 1985 | 18 July 1991 |
| Czech Republic | | 1 January 1993[b] |
| Democratic Republic of the Congo | | 18 March 1996[a] |
| Denmark | 4 February 1985 | 27 May 1987 |
| Djibouti | | 5 November 2002[a] |
| Dominican Republic | 4 February 1985 | 30 March 1988 |
| Ecuador | 4 February 1985 | 25 June 1986[a] |
| Egypt | | 17 June 1996[a] |
| El Salvador | | 8 October 2002[a] |
| Equatorial Guinea | | |
| Estonia | | 21 October 1991[a] |
| Ethiopia | | 14 March 1994[a] |
| Finland | 4 February 1985 | 30 August 1989 |
| France | 4 February 1985 | 18 February 1986 |
| Gabon | 21 January 1986 | 8 September 2000 |
| Gambia | 23 October 1985 | |
| Georgia | | 26 October 1994[a] |
| Germany | 13 October 1986 | 1 October 1990 |
| Ghana | 7 September 2000 | 7 September 2000[a] |
| Greece | 4 February 1985 | 6 October 1988 |
| Guatemala | | 5 January 1990[a] |
| Guinea | 30 May 1986 | 10 October 1989 |
| Guinea Bissau | 12 September 2000 | |
| Guyana | 25 January 1988 | 19 May 1988 |
| Holy See | | 26 June 2002[a] |
| Honduras | 28 November 1986 | 5 December 1996[a] |
| Hungary | 4 February 1985 | 15 April 1987 |
| Iceland | | 23 October 1996 |
| India | 14 October 1997 | |
| Indonesia | 23 October 1985 | 28 October 1998 |

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Ireland | 28 September 1992 | 11 April 2002 |
| Israel | 22 October 1986 | 3 October 1991 |
| Italy | 4 February 1985 | 12 January 1989 |
| Japan | | 29 June 1999[a] |
| Jordan | | 13 November 1991[a] |
| Kazakhstan | | 26 August 1998 |
| Kenya | | 21 February 1997[a] |
| Kuwait | | 8 March 1996[a] |
| Kyrgyzstan | | 5 September 1997[a] |
| Latvia | | 14 April 1992[a] |
| Lebanon | | 5 October 2000[a] |
| Lesotho | | 12 November 2001[a] |
| Libyan Arab Jamahiriya | | 16 May 1989[a] |
| Liechtenstein | 27 June 1985 | 2 November 1990 |
| Lithuania | | 1 February 1996[a] |
| Luxembourg | 22 February 1985 | 29 September 1987 |
| Madagascar | 1 October 2001 | |
| Malawi | | 11 June 1996[a] |
| Mali | | 26 February 1999[a] |
| Malta | | 13 September 1990[a] |
| Mauritius | | 9 December 1992[a] |
| Mexico | 18 March 1985 | 23 January 1986 |
| Monaco | | 6 December 1991[a] |
| Mongolia | | 24 January 2002 |
| Morocco | 8 January 1986 | 21 June 1993 |
| Mozambique | | 14 September 1999[a] |
| Namibia | | 28 November 1994[a] |
| Nauru | 12 November 2001 | |
| Nepal | | 14 May 1991[a] |
| Netherlands | 4 February 1985 | 21 December 1988 |
| New Zealand | 14 January 1986 | 10 December 1989 |
| Nicaragua | 15 April 1985 | |
| Niger | | 5 October 1998[a] |
| Nigeria | 28 July 1988 | 28 June 2001 |
| Norway | 4 February 1985 | 9 July 1986 |

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Panama | 22 February 1985 | 24 August 1987 |
| Paraguay | 23 October 1989 | 12 March 1990 |
| Peru | 29 May 1985 | 7 July 1988 |
| Philippines | | 18 June 1986[a] |
| Poland | 13 January 1986 | 26 July 1989 |
| Portugal | 4 February 1985 | 9 February 1989 |
| Qatar | | 11 January 2000[a] |
| Republic of Korea | | 9 January 1995[a] |
| Republic of Moldova | | 28 November 1995[a] |
| Romania | | 18 December 1990[a] |
| Russian Federation | 10 December 1985 | 3 March 1987 |
| Saint Vincent and the Grenadines | | 1 August 2001[a] |
| Sao Tome and Principe | 6 September 2000 | |
| Saudi Arabia | | 23 September 1997[a] |
| Senegal | 4 February 1985 | 21 August 1986 |
| Serbia and Montenegro | | 12 March 2001[b] |
| Seychelles | 18 March 1985 | 5 May 1992[a] |
| Sierra Leone | | 25 April 2001 |
| Slovakia | | 29 May 1993[b] |
| Slovenia | | 16 July 1993[a] |
| Somalia | | 24 January 1990[a] |
| South Africa | 29 January 1993 | 10 December 1998 |
| Spain | 4 February 1985 | 21 October 1987 |
| Sri Lanka | | 3 January 1994[a] |
| Sudan | 4 June 1986 | |
| Sweden | 4 February 1985 | 8 January 1986 |
| Switzerland | 4 February 1985 | 2 December 1986 |
| Tajikistan | | 11 January 1995[a] |
| The former Yugoslav Republic of Macedonia | | 12 December 1994[b] |
| Timor-Leste | | 16 April 2003[a] |
| Togo | 25 March 1987 | 18 November 1987 |
| Tunisia | 26 August 1987 | 23 September 1988 |
| Turkey | 25 January 1988 | 2 August 1988 |
| Turkmenistan | | 25 June 1999[a] |
| Uganda | | 3 November 1986[a] |

| State | Date of signature | Date of receipt of the instrument of ratification or accession |
|---|---|---|
| Ukraine | 27 February 1986 | 24 February 1987 |
| United Kingdom of Great Britain and Northern Ireland | 15 March 1985 | 8 December 1988 |
| United States of America | 18 April 1988 | 21 October 1994 |
| Uruguay | 4 February 1985 | 24 October 1986 |
| Uzbekistan | | 28 September 1995[a] |
| Venezuela | 15 February 1985 | 29 July 1991 |
| Yemen | | 5 November 1991[a] |
| Zambia | | 7 October 1998[aa] |

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[a] Accession.

[b] Succession.

## Annex II

### States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 16 May 2003[a]

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Morocco

Saudi Arabia

Ukraine

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[a] Total of eight States parties.

## Annex III

### States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 16 May 2003[a]

| State party | Date of entry into force |
|---|---|
| Algeria | 12 October 1989 |
| Argentina | 26 June 1987 |
| Australia | 29 January 1993 |
| Austria | 28 August 1987 |
| Belgium | 25 July 1999 |
| Bulgaria | 12 June 1993 |
| Cameroon | 11 November 2000 |
| Canada | 24 July 1987 |
| Costa Rica | 27 February 2002 |
| Croatia | 8 October 1991 |
| Cyprus | 8 April 1993 |
| Czech Republic | 3 September 1996 |
| Denmark | 26 June 1987 |
| Ecuador | 29 April 1988 |
| Finland | 29 September 1989 |
| France | 26 June 1987 |
| Germany | 19 October 2001 |
| Ghana | 7 October 2000 |
| Greece | 5 November 1988 |
| Hungary | 26 June 1987 |
| Iceland | 22 November 1996 |
| Ireland | 11 April 2002 |
| Italy | 11 February 1989 |
| Liechtenstein | 2 December 1990 |
| Luxembourg | 29 October 1987 |
| Malta | 13 October 1990 |
| Monaco | 6 January 1992 |
| Netherlands | 20 January 1989 |
| New Zealand | 9 January 1990 |
| Norway | 26 June 1987 |

| State party | Date of entry into force |
|---|---|
| Paraguay | 29 May 2002 |
| Peru | 7 July 1988 |
| Poland | 12 June 1993 |
| Portugal | 11 March 1989 |
| Russian Federation | 1 October 1991 |
| Senegal | 16 October 1996 |
| Serbia and Montenegro | 12 March 2001 |
| Slovakia | 17 April 1995 |
| Slovenia | 16 July 1993 |
| South Africa | 10 December 1998 |
| Spain | 20 November 1987 |
| Sweden | 26 June 1987 |
| Switzerland | 26 June 1987 |
| Togo | 8 December 1987 |
| Tunisia | 23 October 1988 |
| Turkey | 1 September 1988 |
| Uruguay | 26 June 1987 |
| Venezuela | 26 April 1994 |

**States parties that have only made the declaration provided for in article 21 of the Convention, as at 16 May 2003**

| | |
|---|---|
| Japan | 29 June 1999 |
| Uganda | 19 December 2001 |
| United Kingdom of Great Britain and Northern Ireland | 8 December 1988 |
| United States of America | 21 October 1994 |

**States parties that have only made the declaration provided for in article 22 of the Convention, as at 16 May 2003[b]**

| | |
|---|---|
| Azerbaijan | 4 February 2002 |
| Mexico | 15 March 2002 |
| Seychelles | 6 August 2001 |

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[a] Total of 48 States parties.

[b] A total of 51 States parties have made the declaration under article 22.

# Annex IV

## Membership of the Committee against Torture in 2003

| Name of members | Country of nationality | Term expires on 31 December |
|---|---|---|
| Mr. Peter Thomas BURNS | Canada | 2003 |
| Mr. Guibril CAMARA | Senegal | 2003 |
| Mr. Sayed Kassem EL MASRY | Egypt | 2005 |
| Ms. Felice GAER | USA | 2003 |
| Mr. Alejandro GONZÁLEZ POBLETE[a] | Chile | 2003 |
| Mr. Fernando MARIÑO MENÉNDEZ | Spain | 2005 |
| Mr. Andreas MAVROMMATIS | Cyprus | 2003 |
| Mr. Ole Vedel RASMUSSEN | Denmark | 2005 |
| Mr. Alexander M. YAKOVLEV | Russian Federation | 2005 |
| Mr. YU Mengjia | China | 2005 |

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[a] Until his death in February 2003. See paragraph 5 of the present report.

## Annex V

## Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its twenty-ninth and thirtieth sessions

### A. Twenty-ninth session

| Report | Rapporteur | Alternate |
|---|---|---|
| Cyprus: third periodic report (CAT/C/54/Add.2) | Mr. El Masry | Mr. Yu |
| Egypt: fourth periodic report (CAT/C/55/Add.6) | Mr. Mariño | Mr. Yakovlev |
| Estonia: initial report (CAT/C/16/Add.9) | Mr. Burns | Ms. Gaer |
| Spain: fourth periodic report (CAT/C/55/Add.5) | Mr. González Poblete | Mr. Rasmussen |
| Venezuela: second periodic report (CAT/C/33/Add.5) | Mr. González Poblete | Mr. Rasmussen |

### B. Thirtieth session

| Report | Rapporteur | Alternate |
|---|---|---|
| Azerbaijan: second periodic report (CAT/C/59/Add.1) | Ms. Gaer | Mr. Yakovlev |
| Belgium: initial report (CAT/C/52/Add.2) | Mr. Camara | Mr. Mavrommatis |
| Cambodia: initial report (CAT/C/21/Add.5) | Mr. Burns | Mr. Yu |
| Iceland: second periodic report (CAT/C/59/Add.2) | Mr. El-Masry | Mr. Mavrommatis |
| Republic of Moldova: initial report (CAT/C/32/Add.4) | Mr. Rasmussen | Mr. Burns |
| Slovenia: second periodic report (CAT/C/43/Add.4) | Mr. Yakovlev | Mr. Yu |
| Turkey: second periodic report (CAT/C/20/Add.8) | Mr. Mariño | Mr. Rasmussen |

# Annex VI

## Decisions of the Committee against Torture under article 22 of the Convention

### A. Decisions on merits

### Complaint No. 119/1998

| | |
|---|---|
| Submitted by: | Mr. V.N.I.M. (represented by counsel) |
| Alleged victim: | Mr. V.N.I.M. |
| State party: | Canada |
| Date of complaint: | 3 November 1998 |
| Date of adoption of the decision: | 12 November 2002 |

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 November 2002,

Having considered complaint No. 119/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account the information made available to it by the author of the complaint and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. V.N.I.M., a national of Honduras born in 1966. He is currently living in Canada, where he requested asylum on 27 January 1997. This request was rejected and he claims that his enforced repatriation to Honduras would be a violation by Canada of article 3 of the Convention against Torture. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party on 18 November 1998. At the same time, acting under rule 108 of its rules of procedure, the Committee requested the State party not to expel the complainant to Honduras while his complaint was being considered.

**The facts as submitted by the complainant**

2.1 The complainant claims that he was accused by the military of having planted a bomb in a building where he was arrested, being the only person on the scene at the time of the explosion on 19 April 1988. While seriously injured, he was interrogated the day after his arrest and claims that doctors amputated his arm under pressure from the military in order to make him reveal the names of his alleged accomplices. An army officer reportedly told a nurse and a doctor that removing part of his arm was a way of sending a warning to other "leftists".

2.2 Following his arrest, he was detained for three years and four months until 8 August 1991. Meanwhile, a decision by San Pedro Sula Criminal Court No. 3 of 13 January 1989 dismissed the proceedings against him for lack of evidence.[a] The complainant claims that during his detention, he was treated by the military as if he was guilty of the bombing and was tortured and ill-treated many times.

2.3 With the help of the Pentecostalist Church, the author then contacted the Canadian authorities to obtain refugee status in Canada, but was informed that he had to be present himself in Canada for an application to be valid. In April 1992, he fled to Costa Rica. During this period, his brothers and sisters were constantly harassed by the military to make them reveal where he was hiding. In May 1992, his brother was detained illegally for five days for that purpose. He was then released, but only after having again been threatened with death. The complainant then contacted the Canadian Embassy in Costa Rica once more to obtain help, but was refused because the political situation was delicate, on account of terrorist acts carried out by Honduran citizens during that period. For lack of resources, the complainant returned to Honduras in March 1993, where he hid in a small village near the border with El Salvador until 1995.

2.4 In 1995, a law was adopted in Honduras inviting all citizens to report abuses by the military. The complainant tried in vain to exercise this right by filing various complaints against the officers who had ordered, or were responsible for, the amputation of his arm.

2.5 In January 1996, the complainant tried to obtain a disability pension and, in support of his claim, he needed to submit a complete medical report. However, the hospital denied him access to his file and informed the military of his request. The author was then arrested again by members of the military in civilian clothes, who questioned him, beat him and stabbed him in the abdomen. He was seriously injured and had to go into hiding again.

2.6 The complainant also states that, after 1994, he remained in contact by mail with Radio Moscow and some Cuban friends and that, in January 1997, the Honduran authorities intercepted one of his letters, which was later used as evidence of his "subversive activities".

2.7 The complainant stayed in hiding until January 1997, when he left Honduras after having obtained a Salvadoran passport. The author arrived in Canada and immediately applied for refugee status.

2.8 After the complainant's departure, his sister was reportedly questioned and threatened with death at her place of work by members of the military, who wanted to know the complainant's whereabouts.

2.9 In Canada, the complainant was first denied his request for asylum dated 17 September 1997. Following that decision, he submitted an application for a judicial review to the Federal Court of Canada, which was rejected on 6 February 1998.

2.10 The complainant then initiated the appropriate proceedings to be included in the "Post-Determination Refugee Claimants in Canada" class (PDRCC application). This request was rejected and he again applied to the Federal Court for a judicial review. The Court also rejected that application.

2.11 On 21 October 1998, the complainant filed a request for a ministerial dispensation to be exempted from the normal application of the law on humanitarian grounds (application for humanitarian status). This request was rejected on 30 March 1999.

**The complaint**

3.1 The complainant believes that human rights are not respected in Honduras and that impunity for the perpetrators of abuses is the rule. He claims that persons possessing information concerning illegal acts committed by the military are particularly threatened, as in his own case. He therefore considers that he may face torture, extrajudicial execution or enforced disappearance if returned to Honduras.

3.2 In support of his allegations of the risk of a violation of article 3 of the Convention, the complainant submits, inter alia, a detailed psychological report referring to the existence of "chronic post-traumatic stress" and also stating that "he fears for his physical integrity and his anxiety level is very high. … His anxiety level is so high and the tension so great that he cannot constructively use his inner resources to solve day-to-day problems". The complainant also indicates that the Canadian authorities did not attach any importance to this psychological report, stating only that it had been submitted late. The complainant explains that this was due to a number of reasons, primarily financial and psychological.

3.3 The complainant also submitted a copy of the decision by San Pedro Sula Criminal Court No. 3 of 13 January 1989, which found him innocent of involvement in the 19 April 1988 attack. The Court acquitted the complainant on the basis, inter alia, of the statements made by a number of witnesses who corroborated the complainant's claims.[b]

3.4 The complainant indicates that he has some information about the members of the military who tortured him, particularly a certain Major Sánchez Muñoz, and maintains that it is a well-known fact that the military goes to great lengths to remove any traces of its crimes, especially by making the victims disappear.

3.5 In response to the Canadian authorities' argument that he lived without any problem in Honduras for a few years following his detention, the complainant also states that he cannot be blamed for having tried to stay in his country.

3.6 With regard to the situation in Honduras, the complainant stresses that, although a democratic regime now exists, the military is still a "sub-State". As proof of this affirmation, the complainant refers to various reports by Amnesty International and FIDH (International Federation of Human Rights Leagues). In its 1997 report, Amnesty International indicates that at least five former members of the National Investigation Department were killed in circumstances suggesting extrajudicial execution; one of them was supposed to testify about a murder reportedly committed by members of the Department in 1994. The complainant also indicates that Honduras is one of the only countries to have been censured many times by the

Inter-American Court of Human Rights and refers, in particular, to the *Velásquez Rodríguez* case, which involved the disappearance of a student and in connection with which the impunity enjoyed by some members of the military in Honduras was sharply criticized.

**State party's observations on the admissibility of the complaint**

4.1 The State party transmitted its observations on the admissibility of the complaint by a note verbale dated 15 September 2000.

4.2 The State party maintains that the complainant did not exhaust all domestic remedies before submitting his complaint to the Committee. More specifically, he did not request leave to apply to the Federal Court for a judicial review of the decision not to grant him humanitarian status.

4.3 The State party recalls in this connection that all decisions taken by the Canadian authorities concerning immigration are subject to judicial review. The complainant has, moreover, availed himself of this remedy twice before, during the proceedings which he initiated to obtain refugee status.

4.4 The State party also submits that this remedy is still open to the complainant even though there is normally a time limit of 15 days for filing a request. The law in fact allows for this deadline to be extended when special grounds are adduced to justify the delay. It should also be noted that, if this possibility of seeking a remedy had been used, the law furthermore allowed for any decision of the Federal Court to be appealed to the Federal Court of Appeal and likewise to the Supreme Court of Canada.

4.5 In support of its arguments, the State party refers to the decision taken by the Committee in the *R.K. v. Canada* case (CAT/C/19/D/42/1996), where it had deemed that the complaint should be declared inadmissible on the ground of non-exhaustion of domestic remedies because the complainant had not made an application for a judicial review challenging the rejection of the request for asylum and had furthermore not filed an application for humanitarian status. In the *P.S. v. Canada* case (CAT/C/23/D/86/1997), also cited by the State party, the Committee had in particular deemed that the fact that the complainant had, inter alia, failed to enter an application for a judicial review was contrary to the principle of the exhaustion of domestic remedies. The State party refers in addition to the Committee's decision in the *L.O. v. Canada* case (CAT/C/24/D/95/1997) concerning the absence of a request for humanitarian status.

4.6 Referring lastly to the case law of the European Court of Human Rights, the State party argues that a judicial review is an effective remedy within the meaning of article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and that, even in cases where the complainant might be subjected to inhuman or degrading treatment if returned to his country, he must observe the formalities and time limits of the domestic procedures before turning to an international body (*Bahaddar v. the Netherlands*, No. 145/1996/764/965, 19 February 1998).

4.7 The State party concludes that, for these various reasons, the Committee should declare the present complaint inadmissible on the ground of non-exhaustion of domestic remedies.

**Comments by the complainant**

5.1 In a letter dated 27 October 2000, the complainant submitted his comments regarding the State party's observations on the admissibility of the complaint.

5.2 The complainant maintains first of all that he availed himself of the opportunity to apply for a judicial review of the decision by which he was denied refugee status, that being the last remedy in all of the proceedings which he had pursued, and had addressed the very substance of the claims made in support of his request for asylum. The subsequent appeals and remedies had concerned only matters of procedure.

5.3 The complainant also states that his application for a judicial review of the decision rejecting the PDRCC application was based on the same arguments as that which could have been made against the decision on his humanitarian status and points out that the two proceedings were concurrent. He therefore considers that applying for a judicial review of the decision on his humanitarian status would have made little sense because the Federal Court would certainly not have decided otherwise than in the other proceeding.

5.4 The procedure to include a person in PDRCC class and the request for humanitarian status are not, according to the complainant, valid remedies in international law because they are entirely discretionary. Likewise, judicial reviews made where applicable by the Federal Court are also not valid under international law because they cannot give rise to a final decision and the case must be referred back to the administrative authorities for a new decision. Furthermore, following its consistent practice, the Federal Court deals not with questions of fact, which are to be determined entirely at the discretion of the administrative authorities, but only with the observance of such principles as must guide the administrative proceedings.

5.5 The complainant refers in this connection to the reasons why domestic remedies must be exhausted under article 22 of the Convention. He submits that the domestic remedies to be exhausted cannot be incapable of offering any chance of success. This applies, according to the complainant, to the judicial review in question, since the practice whereby the review deals only with matters of procedure and not with the facts or the law is particularly well established in the Federal Court of Canada. An application for a judicial review to show that a person runs a real risk of being tortured in the country to which the authorities wish to return him therefore has no chance of success.

5.6 According to the complainant, the remedies to be exhausted are those which make it possible to establish, where appropriate, the violation of the right invoked. Thus, the application for asylum and the ensuing application for a judicial review, notwithstanding the doubt as to its effectiveness, as discussed above, are remedies that, in the complainant's view, have to be exhausted. By contrast, the complainant maintains that the application for humanitarian status and any ensuing application for a judicial review are not remedies which must be exhausted because, even if, in some cases, it is justified to make use of extraordinary remedies, this cannot be the rule for an entirely discretionary remedy such as the application for humanitarian status. The complainant refers in this connection to C. Amerasinghe (*Local Remedies in International Law*, p. 63), according to whom it is not necessary to make use of an extraordinary remedy if it is only discretionary and non-judicial, as in the case of those whose purpose is to obtain a favour and not to claim a right. Now, it has been established, and is not contested by the State party, that the purpose of the application for humanitarian status is not to secure a right, but, rather, to obtain a favour from the Canadian State; this point has, moreover, been emphasized on many occasions by the Federal Court.

5.7 Applications for a judicial review of discretionary decisions like those following a request for humanitarian status are no more effective, even when the Federal Court examines the merits of the case. The complainant illustrates this contention with reference to a similar case, where the decision on an application for humanitarian status had been the subject of a judicial review in which the Federal Court had found that the person concerned was indeed at risk of being subjected to torture or inhuman or degrading treatment. Being unable to take a final decision in such a proceeding, however, the Federal Court had had to refer the case back to the administrative authority, which took a new decision that was contrary to the Federal Court's findings and refused to grant humanitarian status. The complainant considers that the fiction of the judicial review is thereby demonstrated all the more clearly.

5.8 Deeming that he has shown the inadequacy and ineffectiveness of the remedies which he is reproached with not having employed, the complainant then submits to the Committee his contention that the State party has not assumed the burden of proof necessary for it to establish that effective domestic remedies are still available. He refers in this connection to the case law of the Inter-American Court of Human Rights in the *Velásquez Rodríguez v. Honduras* case, according to which it is for the State which contests the exhaustion of all remedies to prove that there are remedies still to be exhausted and that those remedies are effective. The complainant, therefore, suggests that the Inter-American Court of Human Rights has transferred the burden of proof of the exhaustion of all remedies from the complainant to the State. He observes that this is also the case law applied by the Human Rights Committee, which requests the State, in addition to giving details of the remedies available, to provide evidence that there is a reasonable chance of those remedies being effective. In the complainant's view, that should also be the approach of the Committee against Torture.

5.9 After making a more general criticism of the State party's regulations concerning refugees and of the procedures relating thereto, the complainant submits that he has offered proof of his rights and of the risks facing him if returned to Honduras.

5.10 In conclusion, the complainant considers that the rule of the exhaustion of domestic remedies should be interpreted with reference to the objectives of the Convention against Torture. In this connection, he emphasizes that this principle is furthermore applied by the European Court of Human Rights, which has expressly stated that the European Convention on Human Rights should be interpreted with reference to its ultimate objective of ensuring the effective protection of human rights.

5.11 In a letter dated 18 April 2001, the complainant indicates that on 1 November 2000 he finally decided to submit an application to the Federal Court for a judicial review of the decision not to grant him humanitarian status. However, the court rejected the application for a judicial review on 2 March 2001. Therefore, while maintaining the arguments he set forth previously concerning the principle of the exhaustion of domestic remedies, the complainant considers that the arguments originally put forward by the State party are no longer an obstacle to the admissibility of his complaint.

## The Committee's decision on admissibility

6.1 At its twenty-sixth session (April/May 2001), the Committee considered the admissibility of the complaint. It thus ascertained that the same matter had not been, and was not being, examined under another procedure of international investigation or settlement and noted that the complaint was not an abuse of the right to file a complaint and was not incompatible with the provisions of the Convention.

6.2 With regard to the admissibility criterion of the exhaustion of domestic remedies, as provided for in article 22, paragraph 5 (b), the Committee noted that the proceedings instituted by the complainant had gone on for a period of over four years and considered that any further extension of that period would in any case have been unreasonable. Consequently, the Committee declared the complaint admissible.

## State party's observations on the merits

7.1 In its note verbale of 15 September 2000, the State party transmitted its observations on the merits of the complaint together with those on admissibility.

7.2 The State party recalls, first of all, that it is up to the complainant to prove that he runs the risk of being tortured if he is returned to his country. Referring to the jurisprudence of the European Court of Human Rights and the work entitled *United Nations Convention against Torture: A Handbook*, the State party also recalls that an act of torture involves severe suffering, since intense pain is the main feature that distinguishes torture from other inhuman treatment. Referring to the forward-looking nature of article 3 of the Convention, the State party stresses that the fact that the person was tortured in the past does not necessarily mean that he may be subjected to similar treatment in future. With regard to the Committee's jurisprudence, the State party also explains that there must be a foreseeable, real, present and personal risk of torture, thereby implying, inter alia, that it is not enough for a consistent pattern of gross, flagrant or mass violations of human rights to exist in the country of origin. On the basis of several of the Committee's earlier decisions, the State party gives a non-exhaustive list of relevant indicators for the purposes of the implementation of article 3 and, in particular, the existence of independent medical and other evidence in support of the complainant's allegations, possible changes in the country's human rights situation, the existence of political activities by the complainant, proof of his credibility and factual errors in what he says.

7.3 In the present case, the State party maintains that the complainant has not established that there was a foreseeable, real and personal risk that he would be subjected to torture because he is not credible, there is no evidence that he is wanted by the Honduran authorities and he has not established that there is a pattern of mass violations of human rights in Honduras.

7.4 The State party contests the complainant's credibility, particularly because he gave different explanations of the reasons why he was in the place where the explosion occurred. The decision to release him stated that he had gone there to make some telephone calls, whereas he told the Canadian authorities that he had gone there to find some documents for a university examination and, according to a Honduran newspaper, he went into the building because he had seen a light inside. The complainant's claims that the amputation of his arm and the stomach operation he underwent were unnecessary are also not credible because the above-mentioned decision indicates that he was right near the place where the explosion occurred and parts of a hand were found there. The complainant himself stated that he had been blinded by a flash of light and that his eyes and ears were bleeding, that he felt that his arm had been injured and that he had been able to crawl out onto a balcony to call for help. The State party therefore considers that, in view of these elements, it is more than likely that the amputation of his arm was necessary, as was the stomach operation to remove a foreign body. The complainant also contradicted himself about his marital status, having stated in the information file that he was single and had no children, whereas, in the visa application he made in 1995, he had said that he had a wife and two children. He also contradicted himself about a job he held from 1993 to 1995. In addition, he did not give any credible explanations of these contradictions and inconsistencies, something which the psychological report can also not explain.

7.5 The State party also considers that, objectively, the complainant has never been an active opponent or member of an opposition group, that there is no evidence that he is wanted by the Honduran authorities, since he was able to obtain an exit passport in 1997 and the members of his family have never had any problems with the authorities, apart from his brother's detention for five days, that he lived in his country without any problems from 1993 to 1995 and that he left his country four times and returned to it voluntarily each time. He also did not apply for refugee status in Guatemala or Costa Rica, which have both signed the Geneva Convention relating to the Status of Refugees.

7.6 The State party maintains that there is little documentary evidence to support the complainant's fear resulting from his denunciation of abuses of power by the army because there are not only very few disappearances at the present time - and those that do occur primarily involve human rights advocates and criminals - but several members of the military have also been prosecuted for abuses of power. The State party argues that Honduras is not a country where there is a consistent pattern of gross human rights violations and that its situation has changed substantively since the 1980s. In support of this assertion, the State party emphasizes, for example, that, according to a report by the United Nations Development Programme, the number of cases of torture in Honduras dropped from 156 in 1991 to 7 in 1996. The 1999 report by the Special Rapporteur of the Commission on Human Rights on torture does not refer to any case of torture and, for the period prior to 1999, the State party stresses that the Government of Honduras has always replied to the Special Rapporteur's questions. A number of urgent appeals relating to executions were made by the Special Rapporteur on extrajudicial, summary or arbitrary executions for the period from 1997 to 1999. The reports of the Working Group on Arbitrary Detention for 1997, 1998 and 1999 do not refer to any case of torture involving Honduras. The reports of the Working Group on Enforced or Involuntary Disappearances show that most cases of disappearances took place between 1981 and 1984 and the 1998 report refers to only one case of a disappearance, involving a Jesuit priest. As far as the other documentary sources are concerned, the State party indicates that, in 1999, Amnesty International referred to violations of the human rights of human rights advocates, that the 1999 Human Rights Watch report does not deal with Honduras and that the United States State Department "Country Reports on Human Rights Practices for 1999" states that human rights were generally respected in Honduras during the period under review, although serious problems continue to exist with regard to some allegations of extrajudicial executions by members of the security forces. Lastly, with regard to the FIDH document submitted by the complainant, the State party stresses that it refers to human rights advocates, something which the complainant cannot claim to be. In conclusion, the State party maintains that, although this information does reflect some definite concerns, there is no consistent pattern of gross, flagrant or mass violations of human rights in Honduras and that the documentary evidence does not support the allegation of the danger of torture made by the complainant, who has never opposed the Government and never been part of an organization that does.

7.7 The State party draws the Committee's attention to the fact that this type of evaluation is entrusted at the internal level to highly specialized and experienced bodies and that the latest evaluation is subject to monitoring by the Federal Court of Canada. Referring to the Committee's general observation on article 3, as well as the Committee's jurisprudence, the State party expresses the view that it is not up to the Committee to substitute its own evaluation of the facts for that of the authorities, since the complainant's case does not reveal any blatant errors, abuse of procedure or any other irregularity and the standard of article 3 has been applied by the Canadian authorities in the evaluation of the present case.

**Issues and proceedings before the Committee**

8.1 The Committee must decide whether the claimant's return to Honduras would be a breach of the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

8.2 As provided in article 3, paragraph 1, the Committee must decide whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he were returned to Honduras. In order to take this decision, the Committee must take into account all relevant considerations, in accordance with article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the purpose of this analysis is to determine whether the person concerned would personally be in danger of being subjected to torture in the country to which he would be returned. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself a sufficient reason for establishing that a particular person would be in danger of being subjected to torture if he were returned to that country. There must be other reasons to suggest that the person concerned would personally be in danger, but the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be subjected to torture in his own particular situation.

8.3 The Committee draws attention to its general comment on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

8.4 In the present case, the Committee takes note of the State party's observations that the claimant's statements about the risks of torture are not credible and not corroborated by objective evidence.

8.5 On the basis of the information submitted to it, the Committee considers that the complainant has not demonstrated that he is an opponent of the regime who is wanted for terrorist activities. The Committee notes that he was acquitted of responsibility for the 1988 explosion and that he has not been accused of other opposition activities since then. He has thus not shown that there is a personal risk of being subjected to torture if he returns to Honduras. Accordingly, the Committee takes the view that it is not necessary to examine the general human rights situation in Honduras and that the claimant has not demonstrated that there are substantial grounds, in accordance with article 3 of the Convention, for believing that he would be in danger of being subjected to torture if he returned to his country of origin.

9. Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the return of the complainant to Honduras would not constitute a breach of article 3 of the Convention.

## Notes

[a] He claims that he was not released on the day of the decision because of an appeal filed by the opposing party.

[b] The complainant also provided a statement from the Reverend Leo Frade, Anglican Bishop of Honduras, who, having taken into consideration various aspects of the general situation in Honduras and of the complainant's personal situation, confirmed the author's fears.

## Complaint No. 161/2000

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|---|---|
| Submitted by: | Hajrizi Dzemajl et al.<br>(represented by counsel) |
| Alleged victim: | Hajrizi Dzemajl et al. |
| State party: | Serbia and Montenegro* |
| Date of complaint: | 11 November 1999 |
| Date of present decision: | 21 November 2002 |

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 21 November 2002,

Having concluded its consideration of complaint No. 161/2000, submitted to the Committee against Torture by Mr. Hajrizi Dzemajl et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainants are 65 persons, all of Romani origin and nationals of Serbia and Montenegro. They claim that Serbia and Montenegro has violated articles 1, paragraph 1, 2, paragraph 1, 12, 13, 14 and 16, paragraph 1, of the Convention. They are represented by Mr. Dragan Prelevic, attorney at law, the Humanitarian Law Center, a non-governmental organization based in Serbia and Montenegro, and the European Roma Rights Center, an NGO based in Hungary.

1.2 In accordance with article 22, paragraph 3 of the Convention, the Committee transmitted the complaint to the State party on 13 April 2000.

### The facts as presented by the complainants

2.1 On 14 April 1995 at around 10 p.m., the Danilovgrad Police Department received a report indicating that two Romani minors had raped S.B., a minor ethnic Montenegrin girl. In response to this report, at around midnight, the police entered and searched a number of houses in the Bozova Glavica Roma settlement and took into custody all of the young male Romani men present in the settlement (all of them among the complainants to the Committee).

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* Yugoslavia changed its name to Serbia and Montenegro on 10 February 2003.

2.2 The same day, also at around midnight, 200 ethnic Montenegrins, led by relatives and neighbours of the raped girl, assembled in front of the police station and publicly demanded that the Municipal Assembly adopt a decision expelling all Roma from Danilovgrad. The crowd shouted slogans against the Roma, threatening to "exterminate" them and "burn down" their houses.

2.3 Later, two Romani minors confessed under duress. On 15 April, at between 4 and 5 a.m., all of the detainees except those who had confessed were released from police custody. Before their release, they were warned by the police to leave Danilovgrad immediately with their families because they were at risk of being lynched by their non-Roma neighbours.

2.4 At the same time, police officer Ljubo Radovic went to the Bozova Glavica Roma settlement and told the Romani residents of the settlement that they must evacuate the settlement immediately. The officer's announcement caused panic. Most residents fled towards a nearby highway, where they could take buses for Podgorica. Only a few men and women remained in the settlement to safeguard their homes and livestock. At approximately 5 a.m., officer Radovic returned to the settlement, accompanied by police inspector Branko Micanovic. The officers told the remaining Roma still in their homes (including some of the complainants) to leave Danilovgrad immediately, as no one could guarantee their safety or provide them with protection.

2.5 At around 8 a.m. the same day, a group of non-Roma residents of Danilovgrad entered the Bozova Glavica Roma settlement, hurling stones and breaking windows of houses owned by the complainants. Those Roma who had still not left the settlement (all of them among the complainants) hid in the cellar of one of the houses from which they eventually managed to flee through the fields and woods towards Podgorica.

2.6 In the course of the morning of 15 April, a police car repeatedly patrolled the deserted Bozova Glavica settlement. Groups of non-Roma residents of Danilovgrad gathered in different locations in the town and in the surrounding villages. Around 2 p.m. the non-Roma crowd arrived in the Bozova Glavica settlement - in cars and on foot. Soon a crowd of at least several hundred non-Roma (according to different sources, between 400 and 3,000 persons were present) assembled in the then deserted Roma settlement.

2.7 Between 2 and 3 p.m., the crowd continued to grow and some began to shout: "We shall evict them!" "We shall burn down the settlement!" "We shall raze the settlement!" Shortly after 3 p.m., the demolition of the settlement began. The mob, with stones and other objects, first broke windows of cars and houses belonging to Roma and then set them on fire. The crowd also destroyed and set fire to the haystacks, farming and other machines, animal feed sheds, stables, as well as all other objects belonging to the Roma. They hurled explosive devices and "Molotov" cocktails that they had prepared beforehand, and threw burning cloth and foam rubber into houses through the broken windows. Shots and explosions could be heard amid the sounds of destruction. At the same time, valuables were looted and cattle slaughtered. The devastation endured unhindered for hours.

2.8 Throughout the course of the destruction, the police officers present failed to act in accordance with their legal obligations. Shortly after the attack began, rather than intervening to halt the violence, the officers simply moved their police car to a safe distance and reported to their superior officer. As the violence unfolded, police officers did no more than feebly seek to persuade some of the attackers to calm down pending a final decision of the Municipal Assembly with respect to a popular request to evict Roma from the Bozova Glavica settlement.

2.9 The outcome of the anti-Roma rage was the levelling of the entire settlement and the burning or complete destruction of all properties belonging to its Roma residents. Although the police did nothing to halt the destruction of the Roma settlement, they did ensure that the fire did not spread to any of the surrounding buildings, which belonged to the non-Roma.

2.10 The police and the investigating magistrate of the Basic Court in Danilovgrad subsequently drew up an on-site investigation report regarding the damage caused by those who took part in the attack.

2.11 Official police documents, as well as statements given by a number of police officers and other witnesses, both before the court and in the initial stage of the investigation, indicate that the following non-Roma residents of Danilovgrad were among those who took part in the destruction of the Bozova Glavica Roma settlement: Veselin Popovic, Dragisa Makocevic, Gojko Popovic, Bosko Mitrovic, Joksim Bobicic, Darko Janjusevic, Vlatko Cacic, Radojica Makocevic.

2.12 Moreover, there is evidence that police officers Miladin Dragas, Rajko Radulovic, Dragan Buric, Djordjije Stankovic and Vuk Radovic were all present as the violence unfolded and did nothing or not enough to protect the Roma residents of Bozova Glavica or their property.

2.13 Several days following the incident, the debris of the Roma settlement was completely cleared away by heavy construction machines of the Public Utility Company. All traces of the existence of the Roma in Danilovgrad were obliterated.

2.14 Following the attack, and pursuant to the relevant domestic legislation, on 17 April 1995, the Podgorica Police Department filed a criminal complaint with the Basic Public Prosecutor's Office in Podgorica. The complaint alleged that a number of unknown perpetrators had committed the criminal offence of causing public danger under article 164 of the Montenegrin Criminal Code and, inter alia, explicitly stated that there are "reasonable grounds to believe that, in an organized manner and by using open flames … they caused a fire to break out ... on 15 April 1995 … which completely consumed dwellings … and other propert[ies] belonging to persons who used to reside in … [the Bozova Glavica] settlement".

2.15 On 17 April 1995 the police brought in 20 individuals for questioning.
On 18 April 1995, a memorandum was drawn up by the Podgorica Police Department which quoted the statement of Veselin Popovic as follows: "... I noticed flames in a hut which led me to conclude that the crowd had started setting fire to huts so I found several pieces of foam rubber which I lit with a lighter I had on me and threw them, alight, into two huts, one of which caught fire."

2.16 On the basis of this testimony and the official police memorandum, the Podgorica Police Department, on 18 April 1995, ordered that Veselin Popovic be remanded into custody, on the grounds that there were reasons to believe that he had committed the criminal offence of causing public danger in the sense of article 164 of the Montenegrin Criminal Code.

2.17 On 25 April 1995, and with respect to the incident at the origin of the present complaint, the Public Prosecutor instituted proceedings against one person only - Veselin Popovic.

2.18 Veselin Popovic was charged under article 164 of the Montenegrin Criminal Code. The same indictment charged Dragisa Makocevic with illegally obtaining firearms in 1993 - an offence unrelated to the incident at issue notwithstanding the evidence implicating him in the destruction of the Roma Bozova Glavica settlement.

2.19 Throughout the investigation, the investigating magistrate of the Basic Court of Danilovgrad heard a number of witnesses all of whom stated that they had been present as the violence unfolded but were not able to identify a single perpetrator. On 22 June 1995, the investigating magistrate of the Basic Court of Danilovgrad heard officer Miladin Dragas. Contrary to the official memorandum he had personally drawn up on 16 April 1995, officer Dragas now stated that he had not seen anyone throwing an inflammable device, nor could he identify any of the individuals involved.

2.20 On 25 October 1995, the Basic Public Prosecutor in Podgorica requested that the investigating magistrate of the Basic Court of Danilovgrad undertake additional investigations into the facts of the case. Specifically, the prosecutor proposed that new witnesses be heard, including officers from the Danilovgrad Police Department who had been entrusted with protecting the Bozova Glavica Roma settlement. The investigating magistrate of the Basic Court of Danilovgrad then heard the additional witnesses, all of whom stated that they had seen none of the individuals who had caused the fire. The investigating magistrate took no further action.

2.21 Due to the "lack of evidence", the Basic Public Prosecutor in Podgorica dropped all charges against Veselin Popovic on 23 January 1996. On 8 February 1996, the investigating magistrate of the Basic Court of Danilovgrad issued a decision to discontinue the investigation. From February 1996 up to and including the date of filing of the present complaint, the authorities took no further steps to identify and/or punish those individuals responsible for the incident at issue - "civilians" and police officers alike.

2.22 In violation of domestic legislation, the complainants were not served with the court decision of 8 February 1996 to discontinue the investigation. They were thus prevented from assuming the prosecution of the case themselves, as was their legal right.

2.23 Even prior to the closing of the proceedings, on 18 and 21 September 1995, the investigating magistrate, while hearing witnesses (among them a number of the complainants), failed to advise them of their right to assume the prosecution of the case in the event that the Public Prosecutor should decide to drop the charges. This contravened domestic legislation which explicitly provides that the court is under an obligation to advise ignorant parties of avenues of legal redress available for the protection of their interests.

2.24 On 6 September 1996, all 71 complainants filed a civil claim for damages, pecuniary and non-pecuniary, with the first instance court in Podgorica - each plaintiff claiming approximately US$ 100,000. The pecuniary damages claim was based on the complete destruction of all properties belonging to the plaintiffs, while the non-pecuniary damages claim was based on the pain and suffering of the plaintiffs associated with the fear they were subjected to, and the violation of their honour, reputation, freedom of movement and the right to choose their own place of residence. The plaintiffs addressed these claims against the Republic of Montenegro and cited articles 154, 180 (1), 200, and 203 of the Federal Law on Obligations. More than five years after the submission of their claim, the civil proceedings for damages are still pending.

2.25 On 15 August 1996, eight of the Danilovgrad Roma, all of them among the complainants, who were dismissed by their employers for failing to report to work, filed a lawsuit requesting that the court order their return to work. Throughout the proceedings, the plaintiffs argued that their failure to appear at work during the relevant time period was justified by their reasonable fear that their lives would have been endangered had they come to work so soon after the incident. On 26 February 1997, the Podgorica first instance court rendered its decision dismissing the claims of the plaintiffs on the grounds that they had been absent from work for five consecutive days without justification. In doing so the court cited article 75, paragraph 2 of the Federal Labour Code which, inter alia, provides that "if a person fails to report to work for five consecutive days without proper justification his employment will be terminated". On 11 June 1997, the plaintiffs appealed this decision and almost five months later, on 29 October 1997, the second instance court in Podgorica quashed the first instance ruling and ordered a retrial. The reasoning underlying the second instance decision was based on the fact that the plaintiffs had apparently not been properly served with their employer's decision to terminate their employment.

2.26 In the meantime, the case went again up to the Montenegrin Supreme Court which ordered another retrial before the first instance court in Podgorica. The case is still pending.

2.27 The complainants, having been driven out of their homes and their property having been completely destroyed, fled to the outskirts of Podgorica, the Montenegrin capital, where during the first few weeks following the incident they hid in parks and abandoned houses. Local Roma from Podgorica supplied them with basic food and told them that groups of angry non-Roma men had been looking for them in the Roma suburbs in Podgorica. From then on, the banished Danilovgrad Roma have continued to live in Podgorica in abject poverty, makeshift shelters or abandoned houses, and have been forced to work at the Podgorica city dump or to beg for a living.

**The complaint**

3.1 The complainants submit that the State party has violated articles 2, paragraph 1, read in conjunction with articles 1, 16, paragraph 1, and 12, 13, 14, taken alone or together with article 16, paragraph 1, of the Convention.

3.2 With regard to the admissibility of the complaint, and more particularly the exhaustion of local remedies, the complainants submit that, given the level of wrongs suffered, and alongside the jurisprudence of the European Court of Human Rights,[a] only a criminal remedy would be effective in the instant case. Civil and/or administrative remedies do not provide sufficient redress in this case.

3.3 The complainants note further that the authorities had the obligation to investigate, or at least to continue their investigation if they considered the available evidence insufficient. Moreover, even though they acknowledge that they have never filed a criminal complaint against individuals responsible for the attack, they contend that both the police and the prosecuting authorities were sufficiently aware of the facts to initiate and conduct the investigation ex officio. The complainants therefore conclude that there is no effective remedy.

3.4 The complainants also note that since there is no effective remedy in respect of the alleged breach of the Convention, the issue of exhaustion of domestic remedies should be dealt with together with the merits of the case since there is a claim of violation of articles 13 and 14 of the Convention.

3.5 Referring to a number of excerpts from NGO and governmental sources, the complainants first request that the complaint be considered taking into account the situation of the Roma in Serbia and Montenegro as victims of systematic police brutality and dire human rights situation in general.

3.6 The complainants allege that Yugoslav authorities have violated the Convention under either article 2, paragraph 1, read in conjunction with article 1, because, during the events described previously, the police stood by and watched as the events unfolded, or article 16, paragraph 1, for the same reasons. In this regard, the complainants consider that the particularly vulnerable character of the Roma minority has to be taken into account in assessing the level of ill-treatment that has been committed. They suggest that "a given level of physical abuse is more likely to constitute 'degrading or inhuman treatment or punishment' when motivated by racial animus".

3.7 With regard to the fact that the acts have mostly been committed by non-State actors, the complainants rely on a review of international jurisprudence on the principle of "due diligence" and recall the current state of international law with regard to "positive" obligations that are incumbent on States. They submit that the purpose of the provisions of the Convention is not limited to negative obligations for States parties but includes positive steps that have to be taken in order to avoid torture and other related acts being committed by private persons.

3.8 The complainants further contend that the acts of violence occurred with the "consent or acquiescence" of the police whose duty under the law was to assure their safety and provide them protection.

3.9 The complainants then allege a violation of article 12 read alone or, if the acts committed do not amount to torture, taken together with article 16, paragraph 1, because the authorities failed to conduct a prompt, impartial and comprehensive investigation capable of leading to the identification and punishment of those responsible. Considering the jurisprudence of the Committee against Torture, it is submitted that the State party had the obligation to conduct "not just any investigation" but a proper investigation, even in the absence of the formal submission of a complaint, since they were in possession of abundant evidence.[b] The complainants further suggest that the impartiality of the same investigation depends on the level of independence of the body conducting it. In this case, it is alleged that the level of independence of the investigating magistrate was not sufficient.

3.10 The complainants finally allege a violation of article 13 read alone and/or taken together with article 16, paragraph 1, because "their right to complain and to have [their] case promptly and impartially examined by [the] competent authorities" was violated. They also allege a violation of article 14 read alone and/or taken together with article 16, paragraph 1, because of the absence of redress and of fair and adequate compensation.

**State party's observations on admissibility**

4. In a submission dated 9 November 1998, the State party contended that the complaint was inadmissible because the case had been conducted according to the national legislation in force and because all available legal remedies had not been exhausted.

**Comments by the complainants**

5. In a submission dated 20 September 2000, the complainants reiterated their main arguments with regard to the admissibility of the complaint and underlined that the State party had not explained what domestic remedies would still be available to the complainants. In addition, they consider that since the State party has failed to put forward any other objections in that respect, it has in effect waived its right to contest other admissibility criteria.

**Decision on admissibility**

6. At its twenty-fifth session (November 2000), the Committee considered the admissibility of the complaint. The Committee ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement. Regarding the exhaustion of domestic remedies, the Committee took note of the arguments made by the complainants and noted that it had not received any argumentation or information from the State party on this issue. Referring to rule 108, paragraph 7, of its rules of procedure, the Committee declared the complaint admissible on 23 November 2000.

**State party's observations on the merits**

7. Notwithstanding the Committee's call for observations on the merits, transmitted by a note of 5 December 2000, and two reminders of 9 October 2001 and 11 February 2002, the State party has not made any further submission.

**Complainants' additional comments on the merits**

8.1 By a letter of 6 December 2001, the complainants transmitted to the Committee additional information and comments on the merits of the case. In the same submission, the complainants have transmitted detailed information on different questions that were asked by the Committee, namely, on the presence and behaviour of the police during the events, the actions that have been taken vis-à-vis the local population, the relations between the different ethnic groups, and their respective titles of property.

8.2 With regard to the presence and behaviour of the police during the events and the actions that have been taken vis-à-vis the local population, the complainants give a detailed description of the facts referred to in paragraphs 2.1 to 2.29 above.

8.3 With regard to the general situation of the Roma minority in Serbia and Montenegro, the complainants contend that the situation has remained largely unchanged after the departure of President Milosevic. Referring to a report that was earlier submitted by the Humanitarian Law Center to the Committee against Torture and to the 2001 Annual Report of Human Rights Watch, the complainants submit that the situation of Roma in the State party is very preoccupying and emphasize that there have been a number of serious incidents against Roma over the last few years while no significant measures to find or prosecute the perpetrators or to compensate the victims have been taken by the authorities.

8.4 With regard to the property titles, the complainants explain that most were lost or destroyed during the events of 14 and 15 April 1995 and that this was not challenged by the State party's authorities during the civil proceedings.

8.5 The complainants then make a thorough analysis of the scope of application of articles 1, paragraph 1, and 16, paragraph 1, of the Convention. They first submit that the European Court of Human Rights has ascertained in *Ireland v. United Kingdom* and in the *Greek* case, that article 3 of the European Convention on Human Rights also covered "the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault".[c]

8.6 Moreover, the complainants reiterate that the assessment of the level of ill-treatment also depends on the vulnerability of the victim and should thus also take into account the sex, age, state of health or ethnicity of the victim. As a result, the Committee should consider the Romani ethnicity of the victims in their appreciation of the violations committed, particularly in Serbia and Montenegro. In the same line, they reiterate that a given level of physical abuse is more likely to constitute a treatment prohibited by article 16 of the Convention if it is motivated by racial considerations.

8.7 Concerning the devastation of human settlements, the complainants refer to two cases that were decided by the European Court of Human Rights and whose factual circumstances were similar to the one at issue.[d] The European Court considered in both cases that the burning and destruction of homes as well as the eviction of their inhabitants from the village constituted acts that were contrary to article 3 of the European Convention.

8.8 Concerning the perpetrators of the alleged violations of articles 1 and 16 of the Convention, the complainants submit that although only a public official or a person acting in an official capacity could be the perpetrator of an act in the sense of either of the above provisions, both provisions state that the act of torture or of other ill-treatment may also be inflicted with the consent or acquiescence of a public official. Therefore, while they do not dispute that the acts have not been committed by the police officers or that the latter have not instigated them, the complainants consider that they have been committed with their consent and acquiescence. The police were informed of what was going to happen on 15 April 1995 and were present on the scene at the time the attack took place but did not prevent the perpetrators from committing their wrongdoing.

8.9 With regard to the positive obligations of States to prevent and suppress acts of violence committed by private individuals, the complainants refer to general comment 20 of the Human Rights Committee on article 7 of the International Covenant on Civil and Political Rights according to which this provision covers acts that are committed by private individuals, which implies a duty for States to take appropriate measures to protect everyone against such acts. The complainants also refer to the United Nations Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Council of Europe Framework Convention for the Protection of National Minorities, which have provisions with a similar purpose.

8.10 On the same issue, the complainants cite a decision of the Inter-American Court of Human Rights in *Velásquez Rodríguez v. Honduras* according to which:

> "[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention".[e]

Similarly, the European Court of Human Rights has addressed the issue in *Osman v. United Kingdom* and stated that:

> "article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. … [W]here there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person … it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk ... [H]aving regard to the nature of the right protected by article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge".[f]

8.11 The complainants further contend that the extent of the obligation to take preventive measures may increase with the immediacy of the risk to life. In support of this argument, they extensively rely on the judgement of the European Court of Human Rights in *Mahmut Kaya v. Turkey* where the Court laid down the obligations of States as follows: first, States have an obligation to take every reasonable step in order to prevent a real and immediate threat to the life and integrity of a person when the actions could be perpetrated by a person or group of persons with the consent or acquiescence of public authorities; second, States have an obligation to provide an effective remedy, including a proper and effective investigation, with regard to actions committed by non-State actors undertaken with the consent or acquiescence of public authorities.[g]

8.12 The complainants also underline that the obligation of the States under the European Convention on Human Rights goes well beyond mere criminal sanctions for private individuals who have committed acts contrary to article 3 of the said Convention. In *Z. et al. v. United Kingdom*, the European Commission on Human Rights held that:

> "the authorities had been aware of the serious ill-treatment and neglect suffered by the children over a period of years at the hands of their parents and failed, despite the means reasonably available to them, to take any effective steps to bring it to an end. ... [The State had therefore] failed in its positive obligation under article 3 of the Convention to provide the applicants with adequate protection against inhuman and degrading treatment".[h]

8.13 In conclusion, the complainants submit that "they were indeed subjected to acts of community violence inflicting on them great physical and mental suffering amounting to torture and/or cruel, inhuman and degrading treatment or punishment". They further state that "this happened for the purpose of punishing them for an act committed by a third person (the rape of S.B.), and that the community violence (or rather the racist attack) at issue took place in the presence of, and thus with the 'consent or acquiescence' of, the police whose duty under law was precisely the opposite - to assume their safety and provide them protection".

8.14 Finally, concerning the absence of observations by the State party on the merits, the complainants refer to rule 108 (6) of the Committee's rules of procedure and consider that such principle should be equally applicable during the phase of the merits. Relying on the jurisprudence of the European Court of Human Rights and of the Human Rights Committee, the complainants further argue that, by not contesting the facts or the legal arguments developed in the complaint and further submissions, the State party has tacitly accepted the claims at issue.

## Issues and proceedings before the Committee

9.1 The Committee has considered the complaint in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention. Moreover, in the absence of any submission from the State party following the Committee's decision on admissibility, the Committee relies on the detailed submissions made by the complainants. The Committee recalls in this respect that a State party has an obligation under article 22, paragraph 3, of the Convention to cooperate with the Committee and to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been granted.

9.2 As to the legal qualification of the facts that have occurred on 15 April 1995, as they were described by the complainants, the Committee first considers that the burning and destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment or punishment. The nature of these acts is further aggravated by the fact that some of the complainants were still hidden in the settlement when the houses were burnt and destroyed, the particular vulnerability of the alleged victims and the fact that the acts were committed with a significant level of racial motivation. Moreover, the Committee considers that the complainants have sufficiently demonstrated that the police (public officials), although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying "acquiescence" in the sense of article 16 of the Convention. In this respect, the Committee has reiterated on many instances its concerns about "inaction by police and law enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened".[4] Although the acts referred to by the complainants were not committed by public officials themselves, the Committee considers that they were committed with their acquiescence a[illegible]fore constitute a violation of article 16, paragraph 1, of the Convention by the State party

9.3 Having considered that the facts described by the complainants constitute acts within the meaning of article 16, paragraph 1, of the Convention, the Committee will analyse other alleged violations in the light of that finding.

9.4 Concerning the alleged violation of article 12 of the Convention, the Committee, as it has underlined in previous cases (see, inter alia, *Encarnación Blanco Abad v. Spain*, case No. 59/1996, decided on 14 May 1998), is of the opinion that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein. In the present case, the Committee notes that, despite the participation of at least several hundred non-Roma in the events of 15 April 1995 and the presence of a number of police officers both at the time and at the scene of those events, no person nor any member of the police forces has been tried by the courts of the State party. In these circumstances, the Committee is of the view that the investigation conducted by the authorities of the State party did not satisfy the requirements of article 12 of the Convention.

9.5 Concerning the alleged violation of article 13 of the Convention, the Committee considers that the absence of an investigation as described in the previous paragraph also constitutes a violation of article 13 of the Convention. Moreover, the Committee is of the view that the State party's failure to inform the complainants of the results of the investigation by, inter alia, not serving on them the decision to discontinue the investigation effectively prevented them from assuming "private prosecution" of their case. In the circumstances, the Committee finds that this constitutes a further violation of article 13 of the Convention.

9.6 Concerning the alleged violation of article 14 of the Convention, the Committee notes that the scope of application of the said provision only refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment. Moreover, article 16, paragraph 1, of the Convention, while specifically referring to articles 10, 11, 12 and 13, does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation.

10. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 16, paragraph 1, 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to conduct a proper investigation into the facts that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

### Notes

[a] See *Assenov v. Bulgaria*, judgement of 28 October 1998, paras. 102, 117; *Aksoy v. Turkey*, judgement of 18 December 1996; *Aydin v. Turkey*, judgement of 29 September 1997; *X and Y v. The Netherlands*, judgement of 26 March 1985, paras. 21-30.

[b] See *Encarnación Blanco Abad v. Spain*, 14 May 1998, CAT/C/20/D/59/1996, para. 8.2; *Henri Unai Parot v. Spain*, 2 May 1995, CAT/C/14/D/6/1990.

[c] The *Greek* case, *Yearbook of the European Convention on Human Rights*, vol. 12, 1969, p. 461.

[d] *Mentes and Others v. Turkey*, 58/1996/677/867 and *Selcuk and Asker v. Turkey*, 12/1997/796/998-999.

[e] *Velásquez Rodriguez v. Honduras*, judgement of 29 July 1988, p. 291.

[f] *Osman v. United Kingdom*, judgement of 28 October 1998, paras. 115, 117.

[g] *Mahmut Kaya v. Turkey*, judgement of 28 March 2000.

[h] *Z. et al. v. United Kingdom*, judgement of 10 May 2001, paras. 70, 72.

[i] Concluding observations on the initial report of Slovakia, *Official Records of the General Assembly, Fifty-sixth Session*, Supplement No. 44 (A/56/44), para. 104 (c); concluding observations on the second periodic report of the Czech Republic, ibid., para. 113 (b); concluding observations on the second periodic report of Georgia, ibid., para. 81 (d).

## Appendix

### (Case No. 161/1999 - *Hajrizi Dzemajl et al. v. Serbia and Montenegro*)

### Individual opinion by Mr. Fernando Mariño and Mr. Alejandro González Poblete under rule 113 of the rules of procedure

We are issuing this opinion to emphasize that, in our judgement, the illegal incidents for which the State party is responsible constitute "torture" within the meaning of article 1, paragraph 1, of the Convention, not merely "cruel, inhuman or degrading treatment" as covered by article 16. The failure of the State authorities to react to violent evictions, forced displacement and the destruction of homes and property by individuals amounts to unlawful acquiescence which, in our judgement, violates article 1, paragraph 1, particularly when read in conjunction with article 2, paragraph 1, of the Convention.

We believe that, in fact, the suffering visited upon the victims was severe enough to qualify as "torture", because:

(a) The inhabitants of the Bozova Glavica settlement were forced to abandon their homes in haste given the risk of severe personal and material harm;

(b) Their settlement and homes were completely destroyed. Basic necessities were also destroyed;

(c) Not only did the resulting forced displacement prevent them from returning to their original settlement, but many members of the group were forced to live poorly, without jobs or fixed places of abode;

(d) Thus displaced and wronged, these nationals of Serbia and Montenegro have still not received any compensation, seven years after the fact, although they have approached the domestic authorities;

(e) All the inhabitants who were violently displaced belong to the Romani ethnic group, which is known to be especially vulnerable in many parts of Europe. In view of this, States must afford them greater protection.

The above amounts to a presumption of "severe suffering", certainly "mental" but also inescapably "physical" in nature even if the victims were not subjected to direct physical aggression.

We thus consider that the incidents at issue should have been categorized as "torture".

(*Signed*): Fernando Mariño
Alejandro González Poblete

## Complaint No. 204/2002

Submitted by: Mr. H.K.H.
(represented by counsel)

Alleged victim: Mr. H.K.H.

State party: Sweden

Date of complaint: 26 March 2002

Date of present decision: 19 November 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 November 2002,

Having concluded its consideration of complaint No. 204/2002, submitted to the Committee against Torture by Mr. H.K.H. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. H.K.H., a citizen of the Islamic Republic of Iran, currently awaiting deportation from Sweden. He claims that his removal to Iran would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2. On 8 April 2002, the Committee forwarded the complaint to the State party for comments and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to return the complainant to Iran while his petition was under consideration by the Committee. The State party acceded to this request.

### The facts as submitted by the complainant

2.1 While living in Iran, the complainant belonged to and worked for the political organization Cherikhaj Fadai Schalg. The complainant alleges that he was arrested several times between 1983 and 1988, suspected of illegal political activities. In or around September 1989, he alleges that he accidentally killed a revolutionary guard in the following circumstances. The complainant was having a relationship with a girl of Armenian origin. On taking a walk together in a park in central Tehran, they met a group of revolutionary guards. These guards "interfered" with the complainant and his girlfriend because she wore a Christian cross around her neck. The guards threw acid at his girlfriend's face. When one of the guards threatened the complainant with a knife, the complainant managed to grab the knife and stab the guard. He and his girlfriend then fled.

2.2 After this incident, the complainant hid at different places around Tehran. During this period in hiding, he was informed that the guard had died from his wounds and that his girlfriend had committed suicide. He was also informed that some of his relatives' houses had been searched. On 26 October 1989, the complainant succeeded in leaving Iran illegally and arrived in Sweden, where he applied for asylum to the National Immigration Board (now Migration Board and hereinafter referred to as such). On 17 September 1990, the Migration Board rejected the complainant's application as he had given contradictory information about his political activities. The complainant appealed his decision to the Aliens Appeals Board which rejected his application for similar reasons and refused to grant him refugee status. He was later granted a residence permit on the basis of a general amnesty for asylum applicants.

2.3 According to the complainant, his mother was murdered in 1996. In his view, it is likely that the murder was a consequence of his actions. One of his brothers committed suicide in 1996 and another brother was killed in 2000. His two other brothers fled Iran and were granted asylum in Canada. The complainant also alleges that he received oral information that he has been sentenced to death in Iran. A representative of the Revolutionary Guard had told the complainant's mother about the verdict before her death.

2.4 In 1994, the complainant was prosecuted for drug smuggling. He was sentenced to 10 years' imprisonment and ordered deported, as he was considered a danger to the public. The complainant failed in his efforts to appeal his case to the Appellate Court for Middle Sweden and then the Supreme Court. The complainant alleges that his need for protection was not considered through this court procedure. The National Board of Corrections Institutions reduced the complainant's sentence so that he would be released on 8 March 2002.

2.5 On 10 January 2002, the complainant lodged an application with the Government arguing that the Court's decision to expel him from Sweden should be revoked as he had the same need of protection as he had previously maintained in his claim to the Migration Board. In addition, he claimed that the contradictions in the information he had supplied to the Migration Board were related to the fact that he was suffering from the effects of torture which he had suffered during his arrests and interrogations in Iran.[a] Although the author provided information on further documents taken into account by the Government in assessing the complainant's case, this information was provided to the author under the Swedish Secrecy Act and, at the complainant's request, is not provided herein.

2.6 In a decision dated 21 March 2002, the Government decided that there was no reasonable risk that the complainant would be subjected to torture if returned to Iran. On 10 April 2002, the complainant was released from custody by decision of the Minister of Justice, who decided to stay the enforcement of the complainant's expulsion until further notice.

2.7 According to the complainant, the use of torture is common in Iran. Police, the Revolutionary Guard and other security services frequently practise grave forms of torture, with various methods, during investigations. Torture is also used in the prison system after a verdict. In this regard, the complainant refers to reports of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, the United States State Department's "Country Reports on Human Rights" and Amnesty International. The Iranian Parliament itself, he states, has found that torture and excessive violence are used in Iranian prisons.

**The complaint**

3.1 The complainant claims that there are substantial grounds for believing that he would be in danger of being subjected to torture on return to Iran and, therefore, Sweden would be violating article 3 of the Convention if he were returned there. The complainant acknowledges that he provided the Swedish authorities with contradictory information on his involvement in political activities but argues that this was due to the psychological effects of torture. In addition, he argues that he never provided contradictory information on the incident surrounding the guards in the park and that this is his main argument for believing that he will suffer torture if returned to Iran. He claims that this makes him an enemy of the State and the punishment for such an act, whether it is accidental or not, is capital punishment.

3.2 The complainant emphasizes that he is not claiming that the risk of execution would amount to a violation of article 3, but contends that because of the nature of the crime he would surely be subjected to torture prior to execution, possibly with the intention of extracting information from him on his membership of illegal organizations. The complainant also claims that the incidents which occurred in his family, including the fact that two of his close relatives were murdered and two of his brothers were forced to seek asylum abroad, corroborate the fact that the authorities were looking for him and as he could not be found took their revenge on his family.

3.3 The complainant claims that all domestic remedies have been exhausted and that this complaint has not been submitted for examination under any other procedure of international investigation or settlement.

**The State party's submission on the admissibility and merits of the complaint**

4.1 By letter of 18 June 2002, the State party made its submission on the admissibility and merits of the complaint. On admissibility, the State party contends that the complainant's claim that he is at risk of being tortured upon return to Iran lacks the minimum substantiation that would render the complaint compatible with article 22 of the Convention.[b]

4.2 On the merits, the State party recalls that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a person would be in danger of being subjected to torture upon his return to that country and the individual must show that he/she faces a foreseeable, real and personal risk of being tortured. The State party argues that it follows from these principles that it rests primarily with the complainant to collect and present evidence in support of his or her account.

4.3 The State party argues that several provisions of the Aliens Act reflect the same rights as article 3, paragraph 1, of the Convention. In this context, it states that the complainant's case was assessed by the Migration Board in 1990 and 1994, by the Aliens Appeal Board in 1992 and by both the Migration Board and the Government in 2002. Moreover, the issue of impediments to expulsion was assessed by two Swedish courts. It argues that the complainant's claim before the Committee that the issue of his protection was not brought up during the criminal proceedings is untrue. On the issue of expulsion, the court took note of the fact that the complainant had been living with a Swedish woman for four years, with whom he had had a child born in November 1993. However, it found that the crimes of which he had been found guilty were of the utmost severity as they were a danger both to individuals and to society at large. Moreover, it found that these crimes were on a large scale and had been in progress for a relatively long time. In an overall assessment, the court concluded that there were exceptional grounds for the complainant's expulsion. The District Court also based its view on an opinion provided by the Migration Board indicating that there were no impediments to his expulsion.

4.4 The State party also confirms that in examining whether the Government should cancel the expulsion order, it sought the opinion of the Migration Board and the Swedish Embassy in Tehran. The Embassy submitted two sets of information but the State party claims that only one set was submitted to the Committee by the complainant. According to the State party, the Embassy provided the following information. Its overall view was that it was unlikely that the complainant had been convicted in absentia. However, providing that the claim to have killed a revolutionary guard was true, he could have been prosecuted either before one of the Islamic revolutionary courts or before a public court. If sentenced before a public court the judgement would have been served on him or his family. If heard in a revolutionary court he would have no proof that any judgement was served on him. The prescribed sentence for having killed a guard in Iran is the death penalty. Although the revolutionary court would probably not have considered the circumstances of his case sufficiently mitigating to exclude such a sentence, if heard in the public court he could have been successful with the argument that he acted in self-defence. The incident in the park as described by the complainant was credible as similar incidents had been reported to the Embassy. The Embassy could make a formal request to the Iranian authorities whether the complainant had been convicted in absentia, but felt that this might not lead anywhere or might involve the risk that the complainant would be considered "guilty by association".

4.5 The State party contends that the complainant's account of events contains a number of inconsistencies and shortcomings. Although the State party is aware of the Committee's view that complete accuracy seldom can be expected from victims of torture, it considers that these must be held against him in an assessment of his credibility. The State party notes the complainant's argument that the contradictions in his account of events related to the fact that he allegedly suffers from the after-effects of torture. It notes, however, that the complainant did not mention that he had been tortured (or that he twice attempted to take his life while in prison) until his appeal to the Aliens Appeals Board. Thus, he did not mention it either in the interviews before the Migration Board or in his additional observations to the Migration Board, which were drafted with the assistance of his counsel.

4.6 The State party also notes that at no time during the proceedings did the complainant provide any details regarding the alleged torture. In the State party's view, the one medical report (issued 23 May 1990) submitted in the case does not provide any support for the allegation that the complainant suffers from post-traumatic stress disorder. Neither does it contain information to the effect that during the medical examination scars were found on his lips and in his oral cavities. The State party is therefore of the opinion that the reference to his alleged experiences of torture does not suffice as an explanation for the inconsistencies of his account of events.

4.7 On the issue of the complainant's involvement in political activities, the State party notes that he has not submitted any evidence of these activities, or of his claim that the Iranian authorities were aware of his activities. The State party argues that this lack of evidence should be noted, particularly in view of the fact that during the asylum proceedings the complainant provided clearly conflicting information regarding whether he had been politically active in Iran. Furthermore, he submitted different information regarding both the reasons for the arrests and the length of time of the detentions that were allegedly consequences of these activities. If the Committee decides to accept the complainant's statements on this issue, the State party would argue that the complainant claimed only to be a supporter and not a member of the organization Cherikhaj Fadai Schalg and his activities appear to have been "low key" in nature and extent. For these reasons he would never have been more than of minor interest to the Iranian authorities. Therefore, in the State party's view, it is unlikely that the incident in the park was prompted by the complainant's political background as argued by him in his Migration Board application in 1990.

4.8 On the issue of the complainant's account of the incident with the guards in 1989, the State party submits that the complainant altered his version of events in several important respects. Inconsistencies are to be found in respect of the time, place and reason for the alleged attack, as well as the course of events and the consequences thereof. In particular, the State party highlights the new facts, submitted in the complainant's application to the Government on 10 January 2002, that his girlfriend was with him at the time of the incident and that the guards threw acid on her face. He also mentioned in that application, for the first time, that he had actually killed the guard with the knife and that his girlfriend had committed suicide and he admitted that he was aware of these facts when he left Iran.

4.9 The State party also notes that new circumstances regarding this incident, and not mentioned previously to the Swedish authorities, were submitted to the Committee, including the contention that the knife hit the guard's body rather than his face, that his girlfriend was with him at the time of the incident and that it was she and not the complainant who was wearing the crucifix. In addition, the State party submits that the claim that the guard pushed the complainant into a shop window, thereby causing him severe injuries, appears for some unknown reason to have been withdrawn between the asylum proceedings and the proceedings concerning expulsion.

4.10 On the issue of the complainant's departure from Iran, the State party submits that the complainant modified his account of events, first claiming that his father organized the departure with a smuggler and then that he himself contacted the smuggler. In addition, during his interviews with the Migration Board on 26 October 1989 and 13 November 1989, he said that he left Iran through the Iranian seaport of Bandar-E-Abbas and used his military certificate and driver's licence to identify himself during the trip from Tehran to Bandar-E-Abbas. However, later in the proceedings he claimed to have left Iran through Turkey and used false documents to leave the country. For this reason, and the fact that the complainant has provided no documentary proof to support his claims in relation to the journey, the State party argues that it cannot be excluded that he left Iran legally. Considering that the complainant claims to have been wanted by the Iranian authorities for one month at the date of departure, it is questionable whether he would have succeeded in leaving the country had he used his military certificate and driver's licence. According to the State party, this may explain why the complainant later submitted that he used false documents to exit the country.

4.11 On the issue of the death of the complainant's mother, the State party submits that the complainant contradicted himself first by stating that she died at the end of 1990 due to heart problems and then that she was murdered in 1996 as a consequence of her son's actions. The complainant has provided no explanation in this regard.

4.12 Finally, the State party submits that the complainant changed his position with regard to the indictment against him in Sweden. In the District Court, he pleaded guilty but in the Court of Appeal retracted the statement he had made earlier. In the State party's view, this gives reason to seriously call into question his claim that there is a death sentence against him in Iran. In this regard, the State party submits that there is no indication that an arrest order has been issued against the complainant. It also refers again to the opinion of the Swedish Embassy in Tehran that it is not likely that the complainant would have been convicted and sentenced in absentia, as he has claimed. According to the State party, all these contradictory statements made by the complainant raise serious doubts about the general veracity of his claim.

### Comments by the complainant

5.1 The complainant contests the State party's argument that the complaint is inadmissible and submits that the facts of the case are very different from those which the Committee previously found inadmissible for want of substantiation.

5.2 The complainant agrees that the Aliens Act reflects the rights protected in article 3, paragraph 2, of the Convention but argues that the issue is how the State party applies that law; he refers to the fact that the Committee has found violations against Sweden of article 3 on nine previous occasions.

5.3 The complainant argues that the information provided by the Migration Board to the District Court that there are no impediments to the complainant's expulsion to Iran is a standard response from the Migration Board when a case has already been rejected by the Migration Board and the Aliens Appeals Board. He argues that the Migration Board did in no deeper sense consider all aspects of the risks to which the complainant might be exposed if returned to Iran. In fact, he argues that in the written judgement of the District Court the expulsion matters concerning the complainant only cover half a page and deal only with the complainant's relationship with his wife and daughter, and finds that expulsion is necessary because of the serious nature of the crime committed by the complainant. Nothing is mentioned in the judgement concerning the risk to the complainant if he were returned to Iran. He also argues that the Court of Appeal judgement gives no indication that it considered the risk connected to his expulsion.

5.4 On the issue of the complainant having previously suffered torture in Iran, he argues that the reason he did not mention it until relatively late in the procedure must be seen in the light of what is known of the psychological effect of torture and should not be used against him. He argues that, in previous cases, the Committee found that it would not necessarily expect a victim of torture to declare spontaneously that he/she had been subjected to such suffering, and particularly that it could not expect this type of information to be provided in a coherent and consistent manner. The complainant reiterates that he suffers from post-traumatic stress disorder and adds that after receiving the Government's negative decision in March 2002, he became so desperate that he had to be taken to a psychiatric clinic for medical care.

5.5 With respect to the complainant's political activities, he concedes that such activities were "low key" but considered sufficiently dangerous for the Iranian authorities to detain him, even if he was subsequently released. He submits that he worked for the organization Cherikhaj Fadai Schalg but did refer earlier to working for Mujaheddin. According to the complainant, as these organizations worked very closely together the difference was small. He submits that the incident in the park was linked to his political activities, as the guards had recognized the complainant. He argues that if returned to Iran the authorities will review their files and investigate the connection between the incident in the park and his links with political groups. The complainant admits that he gave different information on where the incident with the guards occurred, but that the two locations were very near to one another. The complainant also admits that he was unable to give the exact date of this incident, but he did inform the Swedish authorities on three occasions that it occurred in September 1989. He also submits that the information provided by him on arrival in Sweden may have been unclear as he had just completed a long and unsafe journey and experienced traumatizing events.

5.6 With respect to his girlfriend's involvement in the incident in the park, the complainant admits that he did not explicitly mention that his girlfriend was with him during the incident in the park, but did mention their relationship. He does recall mentioning to his lawyer that corrosive acid had been thrown at her but he submits that he could be mistaken on this point. He claims that he did not become aware that the guard had died and that his girlfriend had committed suicide until after the asylum process and therefore did not mention these facts during the process. Furthermore, the complainant submits that he did not mention that he had been pushed into a shop window by the guards in his application to the Government but that this does not mean that his statement contradicted those previously made.

5.7 On the issue of the contradictory statements made by the complainant on his departure from Sweden, the complainant confirms that he passed through the Iran-Turkey border but that he lied at the outset as he wished to protect the smuggler. With respect to the circumstances of his mother's death, the complainant says that the original statement he made was a misunderstanding and that he has since provided information to the Government proving that his mother was assassinated in 1996. The complainant also submits that even if it is unusual that someone would be sentenced to capital punishment in his absence, it is not impossible. He also states that it is possible that, although his mother told him that he had been sentenced to death in his absence, she could have misunderstood the message received from the guards.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the

Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the exhaustion of domestic remedies is not contested by the State party. The State party submits that the complainant has not substantiated his case for the purposes of admissibility but the Committee is of the view that sufficient information has been provided to consider this complaint on the merits. As the Committee sees no further obstacles to admissibility, it declares the complaint admissible and proceeds to a consideration of the merits.

*Consideration of the merits*

6.2 The Committee must decide whether the forced return of the complainant to the Islamic Republic of Iran would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that, in conformity with the Committee's jurisprudence and despite the allegations of the complainant in regard to the situation in Iran as per paragraph 2.8, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his/her return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 The Committee notes that the main reason the complainant fears a personal risk of torture if returned to Iran is because he allegedly killed a guard in a park in Tehran prior to his departure. The complainant admits that he provided inconsistent information to the State party on his alleged involvement in political activities, which he attributes to the effects of torture, but argues that he was never inconsistent in describing the incident in the park. The Committee notes that the complainant has provided a medical report which indicates that he has marks on his body, but which does not support the allegation that he suffers from post-traumatic stress disorder resulting from being subjected to torture. Indeed, the Committee notes the State party's argument that the complainant did not mention any instances of torture until the appeal to the Aliens Appeals Board and even then provided no details of the alleged torture. Neither has the complainant provided details of any torture in his submission to the Committee. Consequently, the Committee finds it difficult to believe that inconsistencies in the information provided to the State party and to the Committee resulted from the effects of torture. In addition, and contrary to the complainant's claim, the Committee notes that the complainant was inconsistent in his description of the incident in the park, including his failure to mention his girlfriend's presence until his application to the Government in 2002. The Committee also observes that the complainant has failed to sufficiently explain many other inconsistencies in his claim, including the circumstances of his mother's death and his departure from Iran, which raises doubts with the

Committee as to his credibility. In light of the foregoing, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to the Islamic Republic of Iran by the State party would not constitute a breach of article 3 of the Convention.

## Notes

[a] The complainant provided a medical report, dated 23 May 1996, indicating that he had scars on his body alleged to have been caused by cigarette burns and whipping. The complainant provided no details of the alleged torture.

[b] The State party refers to the case of *Y. v. Switzerland*, case No. 18/1994, Views adopted on 17 November 1994.

## Complaint No. 190/2001

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|---|---|
| Submitted by: | K.S.Y. (represented by counsel) |
| Alleged victim: | K.S.Y. |
| State party: | The Netherlands |
| Date of complaint: | 5 January 2001 (initial submission) |

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 2003,

Having concluded its consideration of complaint No. 190/2001, submitted to the Committee against Torture by Mr. K.S.Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. K.S.Y., a citizen of the Islamic Republic of Iran, born on 23 August 1950, whose application for refugee status was rejected in the Netherlands. He claims that his deportation to Iran would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 16 October 2001. Pursuant to rule 108 of the Committee's rules of procedure, the State party was requested not to deport the complainant to Iran pending the consideration of his case by the Committee.

### The facts as presented by the complainant

2.1 The complainant states that he has encountered problems in Iran on account of his homosexuality and because of the political activities of his brother, A.A.

2.2 The complainant had difficulties with Iranian authorities since his brother was recognized as a refugee in the Netherlands in the early 1980s. He was interrogated by the Monkerat (Special Unit of the Revolutionary Committee) four or five times and, after each interrogation, had to sign the next convocation.

2.3 In March 1992, the complainant travelled to the Netherlands for the wedding of his brother. When he returned to Iran, he was interrogated by the authorities about the reasons for his trip and the activities of his brother in the Netherlands. The Iranian authorities confiscated his passport, issued an order prohibiting him from travelling abroad. He was ordered to report daily to the passport office of the Criminal Investigation Department.

2.4 In Iran, the complainant had a homosexual relationship with one K.H., whose homosexuality allegedly was evident due to his "female" behaviour. Because of his homosexuality, he separated from his wife, with whom he had three children.

2.5 On 10 August 1992, the complainant was arrested in Shiraz by the Monkerat on account of complaints by neighbours about his homosexual activities. His partner was not arrested as he went into hiding. The complainant was taken to a prison in the Lout desert and interrogated about his homosexuality and his brother's activities. During his detention, he allegedly was tortured, beaten with cables on the soles of his feet, on his legs and in the face, and hung from the ceiling by one arm for half a day over three weeks. The complainant was later sentenced to death[a] but never received a written copy of the verdict. After five months of detention, he succeeded in escaping with the help of the prison cleaning services who hid him in the garbage truck. The escape was facilitated by the absence of guards in the evening, the prisoners all being confined in their cell.

2.6 The complainant first went to Mashad and then to Ispahan, where some relatives resided. From there he organized his travel to Europe. In August 1993, the complainant and his partner travelled separately to the Netherlands. The complainant used an Iranian passport provided by a smuggler, with his own photograph. When he arrived in the Netherlands, he destroyed the passport as he had been told to do so.

2.7 On 16 March 1994, the complainant applied for both refugee status and a residence permit on humanitarian grounds. Both applications were rejected on 26 August 1994. On 29 August 1994, the complainant applied for a review of this decision. On 22 December 1994, the Advice Committee on Alien Affairs advised the State Secretary of the Department of Justice to deny asylum to the complainant but to grant him a residence permit because of his physical and psychological condition.

2.8 Since his arrival in the Netherlands, the complainant shared accommodation with his partner, K.H., until the latter started relationships with other men. After a fight about this, the complainant killed his partner. On 22 June 1995, the complainant was convicted of murder by the District Court of Leeuwarden and sentenced to six years' imprisonment. He was imprisoned between 21 January 1995 and 21 January 1999. The body of K.H. was repatriated to Iran, after intervention by the Iranian Embassy in the Netherlands.

2.9 In the meantime, on 12 September 1996, the application for review of the initial decision denying asylum and a residence permit to the complainant was rejected. The complainant appealed this decision on 13 September 1996 before the District Court of The Hague.

2.10 Moreover, because of the crime committed by the complainant, the State Secretary of the Department of Justice declared the complainant to be an "undesirable person" on 10 September 1996. A request to review this decision was rejected on 6 December 1996. The complainant made a further appeal against this decision on 24 December 1996 before the District Court of The Hague.

2.11 On 22 December 1999, the District Court of The Hague dismissed both appeals of 13 September 1996 and 24 December 1996.

2.12 In the meantime, on 1 October 1999, the complainant submitted a new application for asylum which was rejected on 5 October 1999. His appeal against this decision was finally rejected on 11 May 2001.

## The complaint

3.1 The complainant claims that if he is returned to Iran he is at risk of being subjected to torture, and that his forcible removal to Iran would entail a violation of article 3 of the Convention by the State party.

3.2 In support of his claim, the complainant argues that he was tortured when he was detained in Iran in 1992. The consequences of these abuses are confirmed by a number of medical reports submitted to the Committee. According to the medical reports, the complainant suffers from severe post-traumatic stress disorder, including suicidal tendencies, and his right shoulder is seriously restricted in its movements because he had been hung by one arm for prolonged periods.

3.3 The complainant considers that the main element supporting the risk of torture are his homosexuality and the events that occurred in the Netherlands after his arrival. He argues that his homosexuality was confirmed by his partner, K.H., during hearings relating to his own asylum application and by the judgement of 22 June 1995, in which the complainant was convicted of murder.

3.4 The complainant explains that after the death of K.H., his body was repatriated to Iran and that the Iranian authorities have undoubtedly tried to obtain explanations about the reasons for K.H.'s death. If he were removed now to Iran, he would certainly face problems relating to the murder and, in particular, his homosexuality. This would put him at risk of again being detained and subjected to torture and other forms of ill-treatment.

3.5 The complainant, referring to a report of Amnesty International of 30 July 1997, notes that homosexual activities are a criminal offence under the Iranian Penal Code. He points out that the mere declaration of four witnesses, as well as the opinion of a judge based on his own knowledge, could lead to punishment. The report further says that a person suspected of "committing" homosexual activities risks arrest, torture (lashes) or ill-treatment.

3.6 As to sources that confirm the existence of acts of torture in Iran, the complainant refers to the report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran of 21 September 1999, according to which "[p]ress accounts suggest that corporal punishment is prevalent. In January 1999, an Iranian newspaper reported that two 15-year-old boys had been sentenced to a flogging for 'offending public democracy' by dressing up as girls and wearing make-up. They explained to the Court that they did this to 'extract money from rich young men'. In June an Iranian newspaper reported that a young man in Mashad had been given 20 lashes for 'wounding public moral sentiments' by plucking his eyebrows and wearing eyeshadow. In March an Iranian newspaper reported that six persons had been sentenced in Mashad to 18 months in jail and 228 lashes for goading passers-by to dance in the street ..." (A/54/365, para. 38).

3.7 The complainant underlines that the decisions of the State party to deny him refugee status were based on alleged discrepancies and, in particular, on the fact that K.H. did not mention during his own asylum hearings that the complainant had been detained in Iran. The complainant argues that K.H. only mentioned his homosexual relationship with him and explained that his partner also had problems but did not give any more details. The complainant also refers to the jurisprudence of the Committee according to which complete accuracy can seldom be expected from victims of torture.

3.8 Finally, the complainant states that the denial of his request to remain in the State party because he was convicted of a serious crime is not compatible with the absolute character of article 3 of the Convention. Furthermore, the complainant argues that he is not a threat to the Dutch society because his crime was committed out of passion, as confirmed in the court judgement of 22 June 1995.

### State party's observations on the admissibility and merits

4.1 In a submission dated 21 November 2000, the State party made its observations on the merits of the case as it did not propose any grounds for inadmissibility.

4.2 Referring to the jurisprudence of the Committee, the State party recalls that in order to be personally at risk of being subjected to torture in the sense of article 3 of the Convention, there must not only be a consistent pattern of gross violations of human rights in the country to which the complainant is expelled, but also specific grounds indicating that the complainant is personally at risk of being subjected to torture. It also recalls that the terms "substantial grounds" imply that torture is highly likely and that the individual must face a foreseeable, real and personal risk of being tortured, as interpreted in the light of the Committee's general comment No. 1 on the implementation of article 3.

4.3 Concerning the situation in Iran, the State party, referring to certain Views of the Committee, argues that although the situation is disquieting, it is not at a point where any person removed to Iran would be in danger of being subjected to torture. Moreover, the complainant's homosexuality does not in itself constitute a risk incompatible with article 3 of the Convention. Referring to a number of country reports carried out by its own services, the State party is of the view that although homosexual acts are prohibited in Iran and may incur the death penalty, there is no active policy of prosecution. Even if a charge of homosexuality is in some cases added to a range of other criminal charges, there are no known cases of conviction, including at the court's own discretion, solely for homosexual acts. It is further noted that the United Nations High Commissioner for Refugees has not "been able to trace any cases of execution of persons found guilty of homosexual relations".

4.4 Concerning the political activities of his brother, A.A., the State party considers that the complainant has not substantiated that they would imply a personal, real and foreseeable risk of torture for him because his statements in that regard have been inconsistent, vague and contained little detail. According to different interviews, the complainant has been arrested once, 5 or 6 times, or more than 40 times in connection with his brother's political activities. Moreover, while the complainant stated that his brother had been the leader of a Mujaheddin group, his brother himself told the State party's authorities that he was only a sympathizer of the Mujaheddin and had distributed pamphlets, but undertook no further activity against the Iranian Government.

4.5 The State party considers that it is implausible that, while the complainant had encountered no problems in this respect until he travelled to the Netherlands in March 1992 with the permission of the authorities, upon his return to Iran he was arrested, his passport was confiscated and he was interrogated in connection with his brother's activities. The State party refers to ministerial reports according to which it is impossible for persons whose background is researched by the authorities to travel abroad, and notes that thousands of Iranians travel abroad annually without encountering problems upon their return to the country.

4.6 Moreover, the State party argues that, even assuming that the complainant was indeed arrested after his return to Iran in April 1992, the fact that he was released shortly afterwards without having been molested and that the political activities of his brother took place 17 years ago could not constitute evidence that the complainant would run the risk of being tortured for that reason.

4.7 Concerning his sexual preference, the State party notes the complainant's declarations that until August 1992 and prior to his departure from Iran in August 1993, he did not have any problems with the Iranian authorities in this respect. The State party further considers that his arrest in August 1992 because of his homosexuality lacks credibility because the complainant was not open about his sexual preference. It is similarly implausible that his partner, K.H., whose appearance was patently homosexual, was not arrested. The fact that K.H. did not mention the complainant's arrest at his asylum hearings also raises doubts about the veracity of this claim given the importance of such a detail.

4.8 Concerning the death penalty to which he was sentenced because of his homosexuality, the complainant stated in his first interview that he did not receive any document recording his sentence. In April 1994, he stated that his sentence had been slipped under his cell door, attached to a piece of string. He later stated that he was told that he had to die because he was homosexual. Finally, in December 1994, he stated that his death sentence had been read out to him at the Monkerat office.

4.9 The State party observes that the complainant's account of his detention and escape, i.e. that there was no guard in the evening and that he was able to escape in a garbage truck without encountering any problems, is inconsistent with the detention of a person under sentence of death.

4.10 The State party considers that the jurisprudence of the Committee relating to the issue of inconsistencies and contradictions made by victims of torture in their account of past abuses is not applicable to the present case because the complainant's contradictions relate to essential parts of his alleged persecution.

4.11 Concerning the medical reports submitted by the complainant, the State party argues that they conflict with the complainant's lack of credibility regarding his reasons for seeking asylum. The State party therefore considers that it is not necessary to examine whether the alleged physical symptoms are indicative of torture and thus relevant for the assessment of the complainant's claim, and that it is incumbent upon the complainant to demonstrate their relevance by presenting a credible claim. Moreover, physicians make their medical findings solely within the limited context of the statements made to them so that the causes of the complainant's medical situation cannot be ascertained objectively.

4.12 Finally, the State party considers that the complainant has not demonstrated that, since his arrival in the Netherlands, his sexual preference has come to the attention of the Iranian authorities, and referring again to the reports made by its Ministry for Foreign Affairs according to which homosexuality remains a social taboo in Iran, that it is implausible that K.H.'s family would have reported to the authorities about the reasons for his death. The complainant has not further demonstrated that he is likely to be imprisoned in Iran, let alone tortured, because of the murder of K.H. committed in another country.

**Comments by counsel**

5.1 In a submission dated 30 May 2002, the complainant's counsel transmitted his comments on the observations of the State party.

5.2 Regarding the absence of known cases of recent prosecutions solely on a charge of homosexuality, counsel stated that the complainant emphasizes that this does not mean that there are none and that it is known that Iranian authorities are reluctant to give information about criminal prosecutions. Moreover, according to an Amnesty International report transmitted to the State party on 7 November 2001, 100 people were tortured in Iran in July 2001, at least 10 people were hanged and 100 death sentences were upheld by the Supreme Court. As the background of these incidents is most of the time difficult to ascertain, homosexuality may in some cases have been an issue.

5.3 The complainant underlines the State party's observation that homosexual acts are often prosecuted together with other criminal charges. He states that this is exactly what he expects to happen in his case since the body of his partner was repatriated to Iran. This will give the Iranian authorities a reason to add a criminal charge of murder to that of homosexuality. The complainant considers that the murder he committed constitutes in itself a risk of being tortured if returned to Iran and that the fact that he has already been punished in the Netherlands is irrelevant.

5.4 Regarding the alleged contradictions and inconsistencies of his account of the facts, the complainant considers that the State party misinterpreted his words, particularly on the question of his detention on account of his brother's political activities. During the first interview with the Dutch authorities, the complainant mentioned that he was arrested once because of his homosexuality and several times in connection with his brother's political activities. His subsequent declarations related variously to his separate and different arrests. The complainant finally notes that he is not in a position to compare his interviews with those of his brother as he was transmitted the file by the State party.

5.5 Regarding the alleged implausibility of his having been arrested in August 1992 for his homosexuality because he was not open about his sexual preference, the complainant reiterates that he was arrested following complaints made by neighbours who saw him with K.H., who was openly homosexual. Moreover, the complainant considers that it is perfectly conceivable that K.H. had gone into hiding.

5.6 Regarding the fact that K.H. did not mention the detention of the complainant during his own asylum hearing, it is noted that K.H. was not specifically interrogated on this issue and that interviews were short.

5.7 The complainant confirms that he never received any document recording his death sentence, and that he was only informed of it when a document relating to the sentence was pushed under his cell door and then pulled back.

5.8 The complainant finally submits an additional report made by Stichting Centrum '45, an organization dealing with traumatized war victims and asylum-seekers, according to which his situation is worsening and that serious risk of suicide exists. Contrary to the State party, the complainant considers that medical reports do constitute evidence in support of his claim. Moreover, he notes that he has already demonstrated the relevance of the medical reports.

**Issues and proceedings before the Committee**

6.1 Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 Moreover, the Committee notes that the State party has not submitted any objections on the admissibility of the communication, including with regard to the exhaustion of domestic remedies. The Committee therefore declares the communication admissible and proceeds without further delay to its consideration of the merits.

7.1 The Committee must decide whether the forced return of the complainant to the Islamic Republic of Iran would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not imply that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.2 In the present case, the Committee notes that the political activities of the complainant's brother took place more than 17 years ago and that they may not in themselves constitute a risk that the complainant himself would be subjected to torture if he were returned to Iran.

7.3 Concerning the alleged difficulties faced by the complainant because of his sexual orientation, the Committee notes a number of contradictions and inconsistencies in his account of past abuses at the hands of the Iranian authorities, as well as the fact that part of his account has not been adequately substantiated or lacks credibility.

7.4 The Committee also notes from different and reliable sources that there currently is no active policy of prosecution of charges of homosexuality in Iran.

7.5 In the light of the arguments presented by the complainant and the State party, the Committee finds that it has not been given enough evidence by the complainant to conclude that the latter would run a personal, present and foreseeable risk of being tortured if returned to his country of origin.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to the Islamic Republic of Iran and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

## Note

[a] The complainant explains that he has never received a copy of the judgement and that he was only informed of his death sentence through a document that was pushed under his cell door and then immediately pulled back. He is therefore not in a position to give the date of the judgement.

## Complaint No. 191/2001

Submitted by: S.S. (represented by counsel)

Alleged victim: S.S.

State party: The Netherlands

Date of complaint: 20 September 2001 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 May 2003,

Having concluded its consideration of complaint No. 191/2001, submitted to the Committee against Torture by Mr. S.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. S.S., a Sri Lankan national belonging to the Tamil population group, born on 27 November 1956 in Kayts (Jaffna), currently residing in the Netherlands and awaiting deportation to Sri Lanka. He claims that his forcible return to Sri Lanka would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 23 October 2001, the Committee forwarded the complaint to the State party for comments and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Sri Lanka while his complaint was under consideration by the Committee. The State party acceded to this request.

### The facts as submitted by the complainant

2.1 The complainant lived in the Jaffna peninsula from 1989 until 1995, where he worked as a karate teacher. He also gave lessons to members of the Liberation Tigers of Tamil Eelam (LTTE) but, although he sympathized with LTTE, he refused to give lessons at their military camps. When the Sri Lankan army took over Jaffna in late 1995, he fled to Chavakachchery, and thereafter to Killinochi, together with his wife and children.

2.2 On 7 April 1996, the complainant's mother died in Trincomalee, which was controlled partly by LTTE, partly by the Sri Lankan army. The complainant wanted to travel to Trincomalee to pay tribute to his deceased mother but was refused a travel pass by LTTE because he did not have anyone to vouch for him.[a] In June 1996, in return for free karate lessons for some LTTE members, he finally managed to obtain permission to travel to Mullaitivu - still located in the LTTE-controlled area - together with a guide. After staying in Mullaitivu for two months at the house of a fisherman, he travelled to the Trincomalee district on a fishing boat. He hid for two to three months with a Tamil in the Anbuvelipuram district of Trincomalee before he went to his sister's house in the centre of Trincomalee in November 1996.

2.3 On 13 December 1996, two days after LTTE bombed a Sri Lankan army camp, the army overran Trincomalee and arrested a large number of people, including the complainant. Everyone above the age of 12 had to stand in front of a temple where a masked man picked out the complainant and other men. The complainant was brought to a military camp in Trincomalee where he was detained for approximately two months. He was locked with four other men in a narrow cell with little light and a concrete floor and without any furniture. He was given one daily meal of poor quality. Since the cell did not have a toilet, the prisoners had to relieve themselves in the corners of the room, excrement being removed from the cell occasionally. Reportedly, the soldiers entered the cell regularly, especially following armed attacks by LTTE, to kick and beat the prisoners, sometimes asking questions at the same time. The complainant states that he was asked whether he was a karate teacher, which he denied. He and the other men were often naked or dressed only in underwear. Frequently, the soldiers poured water on them before beating them. The complainant was beaten with the flat of the hand, the fist, the butt of a rifle and a rubber rod. Once he was allegedly beaten on the soles of his feet with a round stick, causing severe pain in his feet for several days. Another time, he was put against a cupboard with his hands up and was hit on the back with a rubber rod, causing him chronic pain in the back which allegedly persists to date. He was punched on the eye, leaving an injury on one eyebrow. Soldiers also beat him on the genitals and on the kidneys, which resulted in a swollen testicle and blood in his urine. Moreover, he was allegedly burned with a hot stick on his left arm, leaving scars. The big toe of his right foot was severely injured when his torturers stamped on that foot with their boots. When the soldiers hit his right hand with a broken bottle and asked him "Aren't you a karate teacher?", he lost consciousness.[b]

2.4 The complainant woke up in a hospital in the military camp where he stayed for a few days until an unknown Muslim man named Nuhuman managed to organize his escape. The complainant suspects that his sister had paid money to Nuhuman who bribed the guards in front of his hospital room. The complainant states that, together with Nuhuman, he was able to leave the hospital and the military camp without any difficulty.

2.5 Nuhuman drove the complainant to Colombo from where he left Sri Lanka by plane on 14 February 1997, under the name of Mohamed Alee, using a forged Sri Lankan passport. He first flew to Dubai and then to Ukraine, where he stayed for five months. On 1 August 1997, a Russian "travel agent" took him to an unknown place by truck from where he crossed a river together with five other Tamils. They were brought to a city in Poland unknown to the complainant and took a train to Berlin. On 14 August 1997, the Russian guide brought the complainant to the Netherlands where he applied for asylum and for a residence permit on 15 August 1997. The same day, he was first interviewed by an officer of the Dutch Immigration and Naturalization Department (IND), who asked him about his identity and nationality, civil status, family connections, travel and other documents, the date and manner of his departure from Sri Lanka, as well as the route by which he had travelled to the Netherlands.

2.6 By letter of 16 February 1998, the complainant filed an objection with IND against its failure to take a decision on his asylum application within the prescribed time limit of six months which, according to practice, constituted a denial of the application (see paragraph 4.2 below).

On 7 April 1998, he lodged an appeal with the District Court in Zwolle against the failure of IND to take a timely decision on the objection. He withdrew the appeal on 4 June 1998 after IND had promised to expedite its decision, but renewed it by letter, dated 28 August 1998, because IND had not kept its promise. By decision of 18 November 1998, the district court ordered IND to decide on the complainant's application within six weeks.

2.7 On 6 October 1998, the complainant was interviewed a second time, assisted by an interpreter. In the three-hour interview, the complainant reiterated his statement, made during the first interview, that his wife was three months pregnant when he left her in June 1996, that he did not see her again after he left Killinochi, and that he was hiding during his two-month stay in Mullaitivu. As to his family situation, he stated that his father had died during a bombing raid by the Sri Lankan army and that one of his daughters had died of fever because she could not be brought to a hospital in time owing to a curfew. By letter of 1 December 1998, the complainant's former lawyer challenged the circumstances of the second interview. At the same time, he submitted letters the complainant had received from his wife, indicating that she had given birth to a child on 21 May 1997.

2.8 On 11 February 1999, the complainant was heard by an IND committee. The hearing concentrated on the contradiction between the complainant's statement that his wife was three months pregnant when he left her in June 1996 and the fact that she gave birth to a child on 21 May 1997. At the end of the hearing, the complainant's former lawyer told the commission that he would clarify this matter. By letter of 26 February, the lawyer informed IND that the complainant insisted that his wife had been three months pregnant in June 1996. Furthermore, he was not hiding in the strict sense of the word while staying in Mullaitivu and his wife occasionally visited him there. His wife had had a miscarriage, a fact not easily spoken about in Hindu culture especially since, in the Hindu religion, the birth of the lost child would have represented the rebirth of the complainant's deceased mother. The complainant did not even tell his closest brother about this loss until February 1999.

2.9 On 15 March 1999 and on 22 April 1999, IND asked the Medical Assessment Section (BMA) whether the complainant needed medical treatment and whether he was healthy enough to travel. On 20 May 1999, IND rejected the objection to its failure to take a timely decision on the complainant's refugee application. At the same time, the complainant was informed that his expulsion from the Netherlands would be suspended pending receipt of medical advice by BMA. IND justified its decision by stating that: (a) the fact that the complainant is a Tamil was not by itself considered sufficient grounds to be granted asylum; (b) the contradiction in the complainant's statements about the pregnancies of his wife and his hiding in Mullaitivu was unexplained; (c) the description of the complainant's escape from the military hospital was implausible considering that, by his own account, he was a relatively important prisoner; and (d) there were no humanitarian grounds for allowing him to stay. IND concluded that the complainant would not be exposed to a risk of torture if he were returned to Sri Lanka and that there was no basis for applying the policy on post-traumatic stress disorder as a ground for admission, since his allegations of torture were not credible. The decision was accompanied by advice on applicable remedies, informing the complainant that his expulsion would be suspended pending appeal to court.

2.10 On 16 June 1999, the complainant lodged an appeal with the district court in Zwolle against the above decision, arguing as follows: (a) IND was not justified in rejecting his explanation regarding the pregnancies of his wife; (b) his detailed description of the facts as well as visible scars on his body refuted the conclusion that his allegations of torture lacked credibility; (c) bribing soldiers was widespread in Sri Lanka and a plausible explanation for his escape from the military hospital; (d) IND had failed to take into account statements made by his brother 12 years previously in the context of his own application for asylum in the Netherlands confirming that the complainant always had problems because of his karate background; and (e) that his experience of torture was sufficiently traumatizing for the policy on post-traumatic stress disorder to be applied in his case.

2.11 Medical advice by BMA was given on 14 December 1999, stating that, at the time the advice was issued, the complainant suffered from a medical condition, including pain in his lower back and problems with his eyes, but that he no longer received any specific medical treatment, that he was able to travel and that no medical emergency was to be expected.

2.12 By letter of 8 November 2000, IND informed the complainant that the suspension of his expulsion would be lifted. By letter of 15 November 2000, the complainant's lawyer submitted an application for an interim injunction to the District Court of The Hague.

2.13 At the request of the complainant's lawyer, the medical examination group of the Dutch Section of Amnesty International issued a medical report on 12 June 2001, stating that the complainant has several scars on his body and cannot fully extend his index finger. While the scars on his body, especially burn marks on his left arm, a wound on his toe and a piece of dark skin near his eye, seemingly confirmed his torture allegations, the problem with the complainant's index finger might have been caused by the alleged blows with a broken bottle. The report also states that no anatomical damage to the complainant's back can be diagnosed but that this fact does not exclude a possible relationship between the apparent chronic back pain and the beatings the complainant allegedly suffered. Moreover, the report concludes that the psychological symptoms shown by the complainant, such as permanent suffering from his past experiences, his increased sensitivity and overanxiousness, his problems of concentration, as well as insomnia, are typical signs of a post-traumatic stress disorder.

2.14 On 2 July 2001, the District Court of The Hague dismissed the appeal against the decision by IND of 20 May 1999 as unfounded and declared the application for interim measures inadmissible. It considered that the complainant's allegations lacked credibility because of the contradictory statements about the pregnancies of his wife and because of his failure to state the truth about his stay in Mullaitivu. The Court also held that no grounds existed for applying the policy on post-traumatic stress disorder and that the complainant did not suffer any disadvantage from the fact that IND had rendered its decision without having waited for medical advice from BMA. Moreover, the Court considered that the complainant did not belong to the category of persons who would be at risk of being treated in violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms if returned to Sri Lanka.

### Comments by counsel

3.1 Counsel claims that the findings of the District Court do not rule out that the complainant runs a substantial risk of being subjected to torture or other cruel, inhuman or degrading treatment upon return to Sri Lanka and, therefore, the Netherlands would be violating article 3 of the Convention if he were returned to that country.

3.2 As to the complainant's credibility, counsel submits that the essential part of his statements relates to the time when he was detained in the Trincomalee military camp rather than to the question of when his wife was pregnant or when she gave birth.

3.3 Counsel complains about the circumstances under which the second interview was conducted by IND and about the manner in which the complainant was confronted with the inconsistencies in his statements about the pregnancies of his wife and about his hiding in Mullaitivu.

3.4 Counsel submits that, apart from the medical advice by BMA, IND should have considered the medical report by the Amnesty International medical research group which, according to counsel, corroborates the complainant's allegations and confirms that he is traumatized. Counsel claims that the benefit of the doubt should be applied in favour of the complainant since unequivocal evidence hardly ever exists in asylum cases.

3.5 According to counsel, the complainant cannot be returned to the part of Sri Lanka which is controlled by LTTE, because the situation in that area is generally unsafe owing to military operations by LTTE as well as by the Sri Lankan army, and because the complainant has to fear sanctions for having left that area without LTTE approval. By the same token, the complainant cannot, in counsel's view, be sent to the south of Sri Lanka where he would be at risk of being tortured since (a) his past as a well-known karate teacher would raise suspicion of involvement with LTTE; (b) the scars on his body might lead to the conclusion that he was involved in the armed struggle of or at least trained by LTTE; and (c) his Tamil origin, his inability to speak Sinhalese and the fact that he neither has an ID nor a valid reason for wanting to stay in the south increase the risk of being arrested, and eventually tortured, by the Sri Lankan police.[c]

3.6 Counsel concludes that upon return to Sri Lanka, the complainant would be exposed to a substantial risk of being arrested and detained for a period longer than the regular 48 to 72 hours for which Tamils are frequently detained following identity checks. According to counsel, the risk of being tortured during such a prolonged period of detention is generally high.

### The State party's observations on admissibility and merits

4.1 On 22 April 2002, the State party submitted its observations on the merits of the complaint. The State party does not contest the admissibility of the complaint.

4.2 The State party submits that owing to the high population density in the Netherlands, the admission of asylum-seekers to the country is limited to three grounds: (a) refugee status under the 1951 Convention relating to the Status of Refugees; (b) the preservation of essential Dutch interests; and (c) compelling reasons of a humanitarian nature. Refugee status under (a) requires well-founded reasons to fear persecution on the basis of religious, ideological or political convictions or nationality or on the basis of membership of a particular race or social group. In determining whether a person is a refugee, the Dutch authorities also assess whether return to the country of origin would conflict with the State party's obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Asylum applications are dealt with by IND, which is subordinate to the Ministry of Justice. After a first and a second interview with the applicant, the IND officer who conducted the second interview prepares a report on which the applicant may submit comments. Based on a legal presumption, failure by IND to take a decision on the asylum application within six months constitutes a negative decision against which the applicant may file an objection. If the applicant invokes medical grounds for his asylum claim, medical advice with the legal value of expert opinion may be sought from the Medical Assessment Section (BMA) of the Ministry of Justice. Pending the opinion of BMA, the expulsion of the applicant, if ordered, may be suspended.

4.3 With regard to the human rights situation in Sri Lanka, the State party refers to three decisions of the District Court of The Hague and the 1996-2001 country reports by the Netherlands Ministry for Foreign Affairs which state that the return of rejected Tamil asylum-seekers to the Government-controlled areas of the west, the centre and the south of Sri Lanka - where no registration with the police or another authority is required in order to settle - was still a responsible course of action. However, the 2000 report also states that in these areas Tamils are frequently detained for up to 72 hours in the context of identity checks. Moreover, in Colombo, Tamils were occasionally harassed by the Sinhalese population and sometimes tortured by the police when suspected of involvement with LTTE. The country reports also identify a number of risk factors which contribute either to (a) the general risk of being arrested and detained for 48-72 hours following an identity check; or (b) the aggravated risk of being detained for a longer period of time, in which case the risk of torture increases substantially. Risk factors under (a) include (i) youth; (ii) poor knowledge of Sinhalese; and (iii) Tamil origin. Risk factors under (b) include (i) recent arrival in Colombo from one of the country's war zones; (ii) no valid identity documents; (iii) data in police files indicating that a person might be involved in LTTE activities or might have knowledge of such activities; and (iv) scars on the body of a person suspected of LTTE involvement. In case of firm evidence of LTTE involvement, a person can be detained for a period of up to 18 months under the Emergency Regulations or the Prevention of Terrorism Act.

4.4 With respect to the complainant's claim under article 3 of the Convention, the State party submits that, even if a consistent pattern of gross violations of human rights existed in Sri Lanka, that would not as such constitute a sufficient ground for determining that a particular person would be at risk of being subjected to torture upon return to that country. According to the Committee's jurisprudence,[d] specific grounds must exist indicating that the individual concerned would be personally at risk of being subjected to torture. The State party also refers to the Committee's jurisprudence that "substantial grounds" in article 3 require more than a mere possibility of torture.[e]

4.5 In the State party's view, the complainant would not run a real, personal and foreseeable risk of being tortured if he were returned to Sri Lanka. The mere fact that he is a Tamil does not in itself constitute sufficient grounds to establish such a risk. Moreover, the State party submits that the complainant's statements lack credibility, reflected by the contradiction in his statements concerning his wife's pregnancies and the circumstances of his stay in Mullaitivu. The State party submits that this explanation differs in essential points from his earlier statements and that such discrepancy cannot be explained solely by the allegedly poor quality of the translation of the complainant's statements. Even if his cultural background prevented the complainant from speaking about his wife's miscarriage, there was no need for him to have made incorrect statements about his stay in Mullaitivu. The State party also considers his credibility undermined by his statements regarding his escape from the military camp in Trincomalee. It was unlikely that he could escape from the camp without any difficulty, while Sri Lankan soldiers stood watching.

4.6 The State party adds that the complainant has not convincingly established that the Sri Lankan authorities would treat him as a suspect. His claim that he would encounter problems with the authorities was based on speculation unsupported by objective facts, the only evidence substantiating his claims being the letters from his family and friends. With respect to possible sanctions by LTTE should the complainant return to the LTTE-controlled part of Sri Lanka, the State party argues that such sanctions fall outside the definition of torture in article 1 and, therefore, outside the scope of article 3 of the Convention. Since according to article 1, "the term 'torture' means any act … inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity", acts by non-State entities such as LTTE could not, for the purposes of the Convention, be considered to constitute torture.[f]

4.7 As to the Amnesty International medical examination group report, the State party submits that it merely confirms that the complainant's medical symptoms are partly consistent with his allegations; it does not imply that he had satisfactorily established that these symptoms, as well as scars on his body, were the result of torture.

4.8 The State party concludes that, in the light of the general situation in Sri Lanka and the personal circumstances of the complainant, no substantial grounds exist for believing that the complainant would run a real, personal and foreseeable risk of being subjected to torture upon his return to Sri Lanka, in violation of article 3 of the Convention.

### Complainant's comments on the State party's submissions

5.1 Counsel submits that the complainant was precluded from contesting the IND decision of 20 May 1999 on the merits because he had already objected to the IND failure to take a timely decision on his asylum application, thereby losing the possibility to submit arguments on the substance of his application to IND before bringing the case to court.

5.2 With regard to the medical evidence, counsel criticizes the fact that the medical advice sought from BMA was limited to the question of whether the complainant's medical condition required his admission as a refugee without examining the issue of whether his medical complaints as well as his scars corroborated his allegations of torture. Counsel further claims that the State party has failed to appreciate the weight of the medical report by the Amnesty International medical examination group, whose reports are only issued in a small number of credible cases.

5.3 As regards the general situation in Sri Lanka, counsel complains that the State party primarily based its assessment on the country reports issued by the Ministry for Foreign Affairs, without considering other relevant sources.

5.4 With respect to the State party's challenge to the complainant's credibility, counsel denies that his client's statements were inconsistent. He submits that the State party's observation that the complainant qualified the interview translation as "poor" is a simplification of his argument. What he emphasized were the different possibilities of translating the word "hiding" into Dutch, each carrying with it a different meaning.

5.5 Counsel submits that the complainant cannot reasonably be expected to prove in detail how his release from the military hospital in Trincomalee came about.

5.6 As to the complainant's personal risk of being tortured upon return to Sri Lanka, counsel submits that his reputation as a karate teacher increases this risk. In this respect, counsel criticizes the State party's failure to consider the statements on the complainant's karate background which his brother made in the context of his asylum application in the Netherlands. According to these statements, the complainant had left Sri Lanka in 1984 to live in Qatar (until 1987) because he was suspected of training LTTE militants. Furthermore, counsel argues that the fact that the complainant was tortured in the past, combined with the general danger of LTTE suspects being tortured, connotes a high risk that he would be detained and subjected to torture if he were to be returned to Sri Lanka. This risk was increased by the likelihood that the complainant's name had been entered into the database of the National Intelligence Bureau when he was arrested in Trincomalee in 1996. Counsel considers it likely that, during a routine screening of rejected Tamil asylum-seekers by the Sri Lankan authorities, the complainant's arrest and detention in the military camp would come to light together with the information that he had worked as a karate teacher in Jaffna. Moreover, the scars on his body would raise the suspicion that he had been involved in the armed struggle of LTTE. Counsel concludes that the combination of these facts would expose the complainant to a high personal risk of being subjected to torture going beyond a "mere possibility".

## Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party has not contested the admissibility of the communication. As the Committee sees no further obstacles to admissibility, it declares the communication admissible and proceeds immediately to the consideration of the merits.

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 With respect to the general human rights situation in Sri Lanka, the Committee recalls that, in its concluding observations on the initial report of Sri Lanka, it expressed grave concern about "information on serious violations of the Convention, particularly regarding torture linked with disappearances".[g] The Committee also notes from recent reports on the human rights situation in Sri Lanka[h] that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and that complaints of torture are often not dealt with effectively by police, magistrates and doctors. However, the Committee equally notes the ongoing peace process in Sri Lanka which led to the conclusion of the ceasefire agreement between the Government and LTTE of February 2002 and the - albeit currently interrupted - negotiations between the parties to the conflict which have taken place since. The Committee further recalls that, on the basis of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture is not systematic in the State party.[i] The Committee finally notes that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002.

6.4 With regard to the complainant's claim that he would be in danger of being subjected to torture by LTTE for having left the LTTE-controlled area of Sri Lanka without express permission to do so and without designating someone to vouch for him, the Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee observes that the issue of whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention, unless the non-governmental entity occupies and exercises quasi-governmental authority over the territory to which the complainant would be returned.[j] Since the complainant can be returned to territory other than that under the control of LTTE, the issue, on which he bases part of his claim, that he would suffer retribution from LTTE upon his return to Sri Lanka cannot be considered by the Committee.

6.5 With respect to the risk that the complainant might be subjected to torture at the hands of State agents upon return to Sri Lanka, the Committee has noted the complainant's claim that he is at high personal risk owing to his previous activities as a karate teacher, that he has allegedly already been severely maltreated by soldiers of the Sri Lankan army, and that he bears scars which the authorities would likely assume to have been caused by fighting for LTTE. It has considered the claim that, because of the failure by IND to take a decision on the complainant's refugee application within the prescribed time limit, the complainant was precluded from filing an objection regarding the merits of the IND final decision, dated 20 May 1999. The Committee has further noted that IND took this decision before BMA gave its advice on the complainant's medical condition. Similarly, the Committee has noted the attention drawn by the State party to a number of inconsistencies and contradictions in the complainant's account which are said to cast doubt on the complainant's credibility and the veracity of his allegations.

6.6 The Committee notes that the medical evidence submitted by the complainant confirms physical as well as psychological symptoms which might be attributed to his alleged maltreatment at the hand of the Sri Lankan army. However, the Committee observes that, even if the complainant's allegation that he was severely tortured during his detention at the Trincomalee military camp in 1996 were sufficiently substantiated, these alleged acts of torture did not occur in the recent past.

6.7 In the Committee's view, the complainant has not demonstrated any other circumstances, other than the fact that he worked as a karate teacher in Jaffna until 1996 and the presence of scars on his body, which would appear to make him particularly vulnerable to the risk of torture if he were to be returned to Sri Lanka. Moreover, the Committee again notes that the positive development of the peace negotiations between the Government of Sri Lanka and LTTE and the implementation of the peace process under way give reason to believe that a person in the situation of the complainant would not be under such risk upon return to Sri Lanka. The Committee therefore finds that the complainant has not provided sufficient evidence for substantiating that he would be in danger of being subjected to torture were he to be returned to Sri Lanka, and that such danger is present and personal.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

## Notes

[a] Counsel submits that the travel pass system applies to everyone wishing to leave the LTTE-controlled area and is intended to raise funds for the armed struggle of LTTE. In order to ensure that the departure of Tamils does not result in a loss of contributions, each Tamil planning to leave the LTTE-controlled area needs someone with sufficient assets to guarantee his return.

[b] The complainant's description of most of the details of his torture is documented in a medical report, dated 14 June 2001, by the medical examination group of the Dutch Section of Amnesty International.

[c] Counsel refers to several reports on the human rights situation in Sri Lanka as well as a judgement of the European Court of Human Rights in support of these claims. However, the complaint dates from October 2001 and the situation might have changed since then.

[d] The State party refers to the Committee's decisions in *A. v. the Netherlands*, communication No. 91/1997 (CAT/C/21/D/91/1997), para. 6.3 and in *K.N. v. Switzerland*, communication No. 94/1997 (CAT/C/20/D/94/1997), para. 10.2.

[e] See *E.A. v. Switzerland*, communication No. 28/1995 (CAT/C/19/D/28/1995), para. 11.3. The State party further refers to paragraph 6 of the Committee's general comment No. 1 on the implementation of article 3 of the Convention in the context of article 22.

[f] In that regard, the State party refers to the Committee's decision in *S.V. et al. v. Canada*, communication No. 49/1996 (CAT/C/26/D/49/1996), para. 9.5.

[g] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), para. 249.

[h] See Amnesty International report 2002, Sri Lanka, AI index: POL 10/001/2002; Amnesty International, Sri Lanka: Torture prevails despite reforms, AI index: ASA 37/14/1999.

[i] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 44* (A/57/44), chap. IV, sect. B, para. 181.

[j] See *Sadiq Shek Elim v. Australia*, communication No. 120/1998, ibid., *Fifty-fourth Session, Supplement No. 44* (A/54/44), annex VII, sect. A, para. 65; *M.P.S. v. Australia*, ibid., *Fifty-seventh Session, Supplement No. 44* (A/57/44), annex VII, sect. A, para. 7.4; *S.V. et al. v. Canada*, ibid., *Fifty-sixth Session, Supplement No. 44* (A/56/44), annex VII, sect. A, para. 9.5.

## Complaint No. 192/2001

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| Submitted by: | H.B.H., T.N.T., H.J.H., H.O.H., H.R.H. and H.G.H.<br>(represented by counsel) |
| Alleged victims: | The complainants |
| State party: | Switzerland |
| Date of submission: | 15 October 2001 |

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,

Meeting on 29 April 2003,

Having considered communication No. 192/2001, submitted to the Committee against Torture by H.B.H., T.N.T., H.J.H., H.O.H., H.R.H. and H.G.H under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainants, their counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainants, Mr. H.B.H., his wife, Mrs. T.N.T., and their children H.J.H., H.O.H., H.R.H. and H.G.H. - are Syrian nationals of Kurdish origin. They are currently in Switzerland, where they submitted an application for asylum. The application was rejected, and the complainants maintain that their return to the Syrian Arab Republic would constitute a violation by Switzerland of article 3 of the Convention. They have therefore asked the Committee to deal with the case as a matter of urgency, as they were facing imminent expulsion when they submitted their complaint. They are represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 20 November 2001. At the same time the Committee, acting in accordance with rule 108, paragraph 1, of its rules of procedure, requested the State party not to expel the complainants to Syria while their complaint was under consideration.

### The facts as presented by the complainants

2.1 Mr. H. states that he was arrested while performing his compulsory military service owing to his refusal to join the ruling Baath party. He claims to have been imprisoned in Tadmur prison from 1 November 1987 to 31 March 1988, and to have been ill-treated.

2.2 He also states that he has been a committed Yekiti party sympathizer since 1992, and that he became a member of the party in 1995. In this connection, he explains that he has distributed pamphlets and newspapers and taken part in party meetings. He asserts that on 5 November 1996 the Syrian political security service accused him of handing out prohibited leaflets and arrested him, releasing him owing to lack of evidence on 20 November 1996.

2.3 On 18 July 1998 a meeting attended by some 45 to 50 people, including senior officials of the Yekiti party, was held at his home in Al Qamishli, at which he roundly criticized government policy. Following the meeting, on the advice of the organizer, the complainant went to stay with his sister for fear that the authorities would be told about his remarks. Shortly after the meeting, members of the Syrian security service in fact went to his home to look for him. Over the next few days he heard that the security forces had reportedly made several attempts to arrest him. He first hid at his sister's home in Al Qamishli, then at his uncle's home, near to the border with Turkey. There he met up with his family, which had meanwhile also fled Al Qamishli. The complainants state that they left Syria together, in early August 1998, and crossed Turkey en route to Switzerland.

2.4 Mr. H. affirms that, after he fled, he remained in contact with organizations of party exiles in Europe. He also states that he took part in a demonstration against the Syrian regime in the spring of 2000 in Geneva.

2.5 The complainants applied for asylum in Switzerland on 17 August 1998; the application was rejected on 21 January 1999. The Swiss Asylum Appeal Commission (CRA), ruling on the appeal submitted by the complainants on 20 February 2001, confirmed the initial decision to reject the application on 11 April 2001. In a letter dated 23 April 2001 the complainants were given a deadline for departure of 23 July 2001.

2.6 On the basis of a new document intended to demonstrate that the fear of persecution cited was well founded - an internal memorandum from the Al Hasakah political security division, dated 21 August 1998, addressed to the Al Qamishli political security division for the arrest of Mr. H. for prohibited political propaganda on behalf of the Kurdish cause - the complainant, on 21 June 2001, submitted to CRA an application for review of the decision of 11 April 2001. By an interlocutory decision of 28 June 2001 CRA rejected a request for the applications for review to have suspensive effect and for expulsion to be deferred.

2.7 In a letter dated 27 August 2001 a copy of a judgement of 20 May 1999 by an Al Hasakah court sentencing Mr. H. to three years' imprisonment for belonging to a prohibited organization was sent to CRA. The Commission did not consider it appropriate to overturn its interlocutory decision.

2.8 On 31 August 2001 a report from the Swiss section, Berne, of Amnesty International was sent to CRA; the report concluded that the complainants would very probably be imprisoned, interrogated under torture and subjected to arbitrary detention if they returned to Syria. CRA did not change its original decision.

2.9 A letter dated 18 September 2001 providing confirmation of the risk to the complainants - a letter of support from the Western Kurdistan Association - was sent to CRA. In a letter dated 19 September 2001 CRA reiterated its rejection of the request for the application for review to have suspensive effect and for expulsion to be deferred.

2.10 The complainants state that they have exhausted domestic remedies. They specify that although the application for review has not yet been the subject of a judgement on the merits, the expulsion decision has been enforceable since 23 July 2001.

**The complaint**

3.1 The complainants claim that there is a real risk that they will be subjected to torture if they are expelled to Syria.

3.2 To substantiate this fear, they recall their various submissions to the Swiss authorities, in particular the Amnesty International report, which, in their view, has not been taken at its true value, and the copy of the judgement of the Syrian court, which has not been accepted as evidence by the authorities. They stress that, having left their country three years earlier, they would very probably, should they return, have to justify their stay abroad. They claim they would be subjected to intensive interrogation by the authority responsible for departures and issuing passports. They would likely be arrested by one of the Syrian secret services as they are Kurds and have links with the Yekiti party. The complainants assert that this cannot have escaped the notice of the Syrian authorities, particularly since they took part in a demonstration in Geneva. Accordingly, the complainants maintain that there is every reason to believe that they would be interrogated under torture regarding their relationships and contacts abroad as well as their activities.

**State party's observations on admissibility and merits**

4.1 In a letter dated 10 January 2001 the State party indicated that it was not contesting admissibility. The State party noted that on 25 June 2001 the complainants had submitted an application for review to CRA, and that in a decision of 12 December 2001 it had been rejected.

4.2 In a letter dated 20 May 2002 the State party formulated its observations on the merits of the complaint.

4.3 With regard to the allegations of past ill-treatment and torture suffered by Mr. H., the State party notes that the sole content of the file is the statement by him claiming that he was ill-treated during his imprisonment from 1 November 1987 to 31 March 1988 in Tadmur prison. According to the State party, despite the specific questions put to him on this matter in his examination by the Swiss authorities in connection with his request for asylum, the complainant was unable to give more details. To the question: "How were you tortured?", he replied: "The first thing they do is torture you with a tyre. They put you in the tyre and thrash you. I was given only a piece of bread and some cold tea. We were not allowed to look in the mirror for five months. Visits were not authorized. My family did not know where I was."[a] The State party takes the view that the complainant is speaking, in very general terms, of a method of torture which is apparently used, but without explicitly stating that he himself was tortured in that way. Moreover, he gives no details of the precise circumstances of the ill-treatment undergone, for example, the number of people who supposedly ill-treated him, or the frequency, place and purpose. According to the State party, this lack of specificity and detail casts considerable doubt on the credibility of the ill-treatment suffered by the complainant during his military service.

4.4 However, according to the State party, had the complainant actually suffered ill-treatment in the past it would not be relevant to a determination in the current proceedings. Since the ill-treatment had allegedly taken place more than 10 years before the complainant left Syria, the requirement for the ill-treatment to have been in the recent past in order to evidence the risk of being subjected to torture within the meaning of article 3 of the Convention - as provided for in the Committee's general comment No. 1 - has clearly not been met. The State party adds that the same is true a fortiori for the complainant's wife, since she has never alleged ill-treatment by State organs.

4.5 With regard to his political activities in Syria, the complainant has provided, in the context of national asylum proceedings, certificates dated 1 October 1998 and 12 March 1999 attesting to his membership in the Yekiti party. However, when questioned about the party in the asylum proceedings, he was, somewhat surprisingly, able to give only very general information on the aims of the party of which he claimed to be a member in a position of responsibility. Moreover, he had only very approximate knowledge of the party structure, particularly of its executive bodies. He cited the secretary of the party as its supreme organ, whereas information from reliable sources in the possession of the Swiss asylum authorities indicates that the congress, which the complainant did not even refer to, is the supreme decision-making body in the Yekiti party.[b] According to the State party, since all members of the Yekiti party had to serve an apprenticeship before their formal admission to the party, the information supplied by the complainant regarding the purposes and structure of the party were far too vague for his membership claim to be credible. Thus, the asylum authorities concluded that the complainant was not connected with the Yekiti party as he maintained. In the view of the State party, the two membership certificates were irrelevant, since the documents had no official standing and had, the Swiss authorities considered, based on their experience and knowledge, been prepared so readily that they could only be considered as documents provided as an accommodation.

4.6 As evidence of his close links with the Yekiti party and his commitment to it, the complainant makes allegations which are not seen as credible by the State party. Firstly, the assertion that a secret meeting of some 50 people took place at the complainant's home is scarcely believable. The State party observes that if the complainant was under such close surveillance by the Syrian security forces as he claims, he would not have been able to have held such a big meeting at his home without attracting the attention of the security forces. Neither, in the view of the State party, is the complainant's assertion credible that after the meeting he had hidden for a week at his sister's home in the same town, where he supposedly learned that the security forces were conducting an intensive search for him. In the view of the State party there can be no doubt that had the security forces wished to arrest the complainant they would not have looked for him only at his home but would also have searched the home of his sister, who lived in the same locality. Similarly, the State party asserts that it is difficult to imagine how the complainant, supposedly being actively sought, would have been able to prepare an escape for himself and his family while in hiding at his sister's home.

4.7 During the CRA review proceedings, the complainant produced a document from the Al Hasakah security division dated 21 August 1998 (see paragraph 2.6). He stated that an acquaintance of his family, living in Syria and with good relations with secret service milieux, had obtained the document by bribery. Subsequently the document was supposedly brought through Germany by another acquaintance as a Polaroid photograph, and from there sent to Switzerland by post. According to the State party, as CRA stated in its decision of 12 December 2001, it is inconceivable that the complainant could have taken possession of the document, which was not addressed to him personally and which he himself described as an internal memorandum. For the State party, the complainant's explanations of how this Syrian security service document supposedly reached him in Switzerland are extremely vague and unconvincing. In fact, none of the individuals who supposedly helped to obtain the document is mentioned by name. Moreover, the links between these individuals and the complainant are not made clear. In addition, no information is given about the bribery referred to, and, lastly, there is no explanation of why the document had to transit Germany before reaching the complainant in Switzerland. In view of these inconsistencies the State party takes the view that the document is bogus. Further, in his communication to the Committee, the complainant makes no claim that would contradict that interpretation. Lastly, according to the State party, it is to say the least strange that the complainant acquired the document, which dates from 1998, and included it in his file only after the Federal Office for Refugees (OFR) and CRA had rejected his asylum application. It is thus highly probable that the document was prepared for the sole purpose of constituting new evidence that would allow review proceedings to be initiated.

4.8 Also in the CRA review proceedings, the complainant produced a copy of a judgement of 20 May 1999 by an Al Hasakah court sentencing him to three years' imprisonment for belonging to a prohibited organization (see paragraph 2.7). Contrary to the complainant's assertions (see paragraph 3.2), the State party affirms that CRA, in its review decision of 12 December 2001, examined all the documents submitted by Mr. H., including the judgement of 20 May 1999,[c] and rightly considered that the latter document was bogus, for the following reasons:

(a) Firstly, its content does not correspond to the statements by the complainant and his wife. The complainants never cited in the asylum proceedings the imprisonment from 1 to 16 June 1998 mentioned in the judgement. In the examination proceedings on 21 December 1998 the complainant referred only to imprisonment during his military service in 1987 and further imprisonment in 1996. In answer to the specific question of whether he had been arrested or imprisoned on other occasions, the complainant said that he had not.[d] The complainant's wife, when questioned, also never mentioned any imprisonment of her husband in June 1998. Rather, she stated that her husband's most recent arrest had been on 5 November 1996;[e]

(b) Secondly, the sentence of three years referred to in the judgement exceeds the penalty under Syrian law for the offence for which the complainant was allegedly sentenced;

(c) Further, the judgement contradicts the security service internal memorandum dated 28 August 1998 produced by the complainant. It is scarcely credible that, despite being suspected of having founded a secret organization, the complainant was detained for only two weeks and released on 16 June 1998, only to be sought by the security service for the same offence two months later. Given the seriousness of the offence of founding a secret organization, the release referred to in the judgement appears more than doubtful. It is, moreover, surprising that the complainant was sentenced in absentia only on 20 May 1999, that is approximately one year after the Syrian authorities became aware of his subversive activities;

(d) Lastly, the complainant claims that an official at the court which sentenced him was bribed to make a copy of the judgement. The copy produced by the complainant is, however, of such poor quality that it could hardly be a copy of an original judgement, but at most a copy of a document already copied several times previously.

4.9 In view of these contradictions and inconsistencies, the State party asserts that the copy of the judgement is clearly bogus.

4.10 Regarding the complainant's political activities outside Syria (see paragraph 2.4), the State party considers that, contrary to the assertion by the complainants, the photograph of the complainants at a demonstration for Kurdish rights in front of the Permanent Mission of the Syrian Arab Republic in Geneva proved neither that they took part in the demonstration nor that they engaged in any political activity in Switzerland. The photograph merely shows that the complainants were present in a location at which a political demonstration took place, leaving open the question of what demonstration it was. In particular, it does not show what role the complainants played in the demonstration; their position some way from individuals holding a sign, and the fact that they were surrounded by young children, suggest, rather, that the complainants were simply spectators at the demonstration. In any event, in the view of the State party, it could not be concluded from the photograph that the complainants were politically active in Switzerland, and that as a result they risked punishment if returned to Syria.

4.11 Regarding the Amnesty International report of 3 July 2001 (see paragraph 2.8), the State party observes that at the beginning of the report that organization made it clear that the report made no judgement as to the risks run by the complainants owing to their activities prior to their flight, since it was not in a position to undertake the necessary investigations. According to Amnesty International, the risk of undergoing ill-treatment in the event of return to Syria was supposedly based on the complainant's links with the Yekiti party[f] and his activities in Syria.[g] In the view of the State party these conclusions are questionable since, as previously stated, the close links with the Yekiti party and the danger supposedly incurred by the complainants owing to political activity abroad[h] have not been established in any way. Regarding measures to which persons returning to Syria after a stay abroad might be subjected, namely interrogations by various State bodies, and beatings of persons under interrogation,[i] the State party emphasizes that these facts are mentioned in general and that the Amnesty International report does not show that the complainants personally ran a particular and serious risk of undergoing ill-treatment in the event of return to their country. With regard to the situation of Kurds in Syria and the arrests to which they are subject,[j] Amnesty International acknowledges that people have been arrested not because of their Kurdish origin, but because of their political activities. Thus, according to the State party, the complainants' assertion that they risked, in the event of return to Syria, being ill-treated or tortured because of their Kurdish origin is baseless. Furthermore, the State party maintains that information in possession of the Swiss Government indicates that a lengthy stay abroad in connection with an asylum application does not, in and of itself, lead to prosecution on political grounds or to particular problems on returning to Syria. Thus, referring to the Committee's jurisprudence,[k] the State party concludes that the condition sine qua non of a "personal" risk of being subjected to ill-treatment is not present in this case.

4.12 Regarding the particular situation of Mrs. T., the State party observes that throughout the proceedings only Mr. H. adduced reasons which could substantiate - were they well founded - the view that it would be unacceptable for him to return to Syria. In contrast, there is no claim that Mrs. T. was politically active in Syria or elsewhere or that she was arrested or ill-treated. In this connection the State party recalls that article 3 of the Convention does not guarantee, in the Committee's practice, family reunion if only one of its members can demonstrate genuine and serious risk of being subjected to ill-treatment. Accordingly, the State party concludes that the return of Mrs. T. would in no way violate the Convention.

4.13 Regarding the credibility of the information provided by the complainants, the State party considers that the many contradictions identified in the complainant's statements (in particular regarding his so-called political activities) make them incredible. The State party particularly wishes to point out that throughout the domestic proceedings the complainants have produced a number of documents, not of their own accord at the beginning of the proceedings, but only as a result of negative decisions taken by the Swiss authorities against them. Thus, the complainants produced the photograph showing them in Geneva in the spring of 2000 only after having received the CRA decision of 12 April 2001. The same is true of the Syrian security forces document of 21 August 1998 and the Syrian criminal judgement of 20 May 1999. The State party maintains that this behaviour suggests that the complainants "produced" certain evidence only once they had realized that their allegations were not achieving the desired effect on the competent national authorities.

**Complainants' comments on the State party's observations**

5.1 In a letter dated 23 October 2002 the complainants stated that they have no comments in addition to those made in their original complaint.

**Issues and proceedings before the Committee**

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It also notes that the State party has not contested admissibility. It therefore considers that the complaint is admissible. As both the State party and the complainants have provided observations on the merits of the complaint, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the return of the complainants to the Syrian Arab Republic would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the complainants would be in danger of being subjected to torture if they were returned to Syria. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country. There must be other grounds indicating that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment No. 1 on the implementation of article 3 in the context of article 22, paragraph 6 of which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable."

6.5 In this case the Committee notes that the State party draws attention to blatant inconsistencies and contradictions in the accounts and submissions by the complainants, casting doubt on the veracity of their allegations. It also takes note of the information supplied in this regard by the complainants.

6.6 Regarding the allegations of ill-treatment and torture in Syria, the Committee notes that only Mr. H. states that he suffered such treatment while imprisoned in Tadmur prison between 1 November 1987 and 31 March 1988, and that he remained in the country undisturbed until his departure in 1998.

6.7 Regarding the complainants' political activities, the Committee notes, firstly, that only Mr. H. reports such an involvement in Syria. Secondly, in view of the complainants' contradictions and inconsistencies and the serious doubts as to the authenticity of the internal memorandum from the Syrian security service of 21 August 1998 and of the Al Hasakah court judgement of 20 May 1999, the Committee considers that the complainant has not established, either in his statements or by means of the documents produced, his active membership in the Yekiti party and opposition to the Syrian authorities. Lastly, the Committee considers that the complainants have not shown involvement in opposition political activities in Switzerland.

6.8 The Committee considers that the above-mentioned documents were produced by the complainants only in response to decisions by the Swiss authorities to reject their application for asylum, and that the complainants have failed to offer any coherent explanation of the delay in making submissions.

6.9 Regarding the 2001 Amnesty International report, in addition to the contradictions pointed out by the State party concerning the conclusions drawn regarding the complainants' political activities in Syria, the Committee notes that the information relating to measures that might affect persons returning to Syria after a long stay abroad is invoked in general terms without being linked in a relevant manner to the specific cases of the complainants, and is contradicted by the information transmitted by the State party, in submissions which the complainants have not subsequently contested. It is also apparent that the Kurdish origin of the complainants would not in itself constitute a reason for ill-treatment or torture in Syria.

6.10 Lastly, the Committee notes that the complainant Mrs. T. has submitted no arguments as to the risk of her being subjected to ill-treatment in the event of return to Syria.

6.11 Consequently the Committee considers that the complainants have not demonstrated the existence of serious grounds suggesting that their return to Syria would expose them to real, specific and personal risk of torture.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that returning the complainants to the Syrian Arab Republic would not constitute a breach of article 3 of the Convention.

## Notes

[a] Transcript of examination of complainant by canton of Zurich Immigration Police, 21 December 1998.

[b] Ibid.

[c] CRA review decision, 21 December 2001, p. 7.

[d] Statements by complainant, verbatim record of examination by canton of Zurich Immigration Police, 21 December 1998, p. 10.

[e] Statement by complainant, verbatim record of examination at Kreuzlingen Reception Centre, 20 August 1998, p. 4.

[f] Report, chaps. 5.8, 5.10 and 5.11.

[g] Amnesty International report, chap. 5, "Situation in the event of return of Mr. H. and Mrs. T."

[h] Ibid., chap. 5.10.

[i] Ibid., pp. 4-6.

[j] Ibid., chap. 3.

[k] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 44* (A/51/44), annex V, *Kisoki v. Sweden*, complaint No. 41/1996, para. 9.4.

## Complaint No. 193/2001

Submitted by: Ms. P.E. (represented by counsel)

Alleged victim: Ms. P.E.

State party: France

Date of complaint: 24 September 2001

Date of decision: 21 November 2002

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 21 November 2002,

Having considered complaint No. 193/2001, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account the information made available to it by the author of the complaint and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant, P.E., a German national, born on 26 May 1963 in Frankfurt, was extradited by France to Spain on 7 November 2001. She claims that she was the victim of a violation by France of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 5 December 2001. At the same time, in pursuance of rule 108 of its rules of procedure, the Committee requested the State party not to extradite the complainant to Spain while her complaint was under consideration by the Committee.[a]

### The facts as submitted by the complainant

2.1 In November 1996,[b] the complainant was arrested in the Landes region in the company of her partner, Juan Luis Agirre Lete, during a French customs check, and placed in pre-trial detention in Paris. Following her arrest, she was sentenced to 30 months' imprisonment on 23 February 1999 on charges of participating in a conspiracy as an alleged member of the Basque separatist organization, Euskadi Ta Askatasuna (Basque Fatherland and Liberty) (ETA).[c]

2.2 As soon as she was arrested, the Spanish authorities made a first request for her extradition, but the request was later withdrawn on grounds of mistaken identity. A second request for extradition was lodged by the Spanish authorities a year later, alleging cooperation with an armed group, on the basis of evidence that was claimed to be questionable but was given a favourable reception by the French authorities.

2.3 A third request for extradition[d] was lodged by Spain on the basis of a statement made by a certain Mikel Azurmendi Penagarikano, who was arrested in Seville on 21 March 1998 by the Spanish Civil Guard and who is alleged to have suffered a variety of treatment in breach of the Convention while being held. The complainant adds that Mr. Azurmendi's partner was arrested at the same time and also suffered treatment in breach of the Convention.

2.4 While in custody, Mikel Azurmendi is reported to have made two statements under duress to the Civil Guard on 23 and 24 March 1998. In these statements, which are said to contain many contradictions and implausibilities, the complainant was implicated, with some 30 others, as a member of the ETA "Madrid Commando" and accused of carrying out, together with others, surveillance and checks on the route taken in Madrid by a van belonging to the general staff of the Spanish air force, with the aim of carrying out an act of violence, and of participating, together with others, in the preparation of an explosive device placed on board a vehicle that was used by other members of the commando in an attempted act of violence on 25 January 1994. The complainant nevertheless maintains that she had long since left Madrid at the time of the events.

2.5 Concerning the circumstances in which these statements were made, the complainant produces an excerpt from Mr. Azurmendi's testimony:

> "I am writing this letter to you to denounce the treatment inflicted by the Spanish security forces, more specifically the Civil Guard, at the time of my arrest [in Seville], and during the transfer to the Madrid station and my stay there. Concerning my arrest, it occurred on Jose Laquillo Street, No. 5, first floor, door B. They immobilized me and handcuffed me, they didn't stop rubbing my nose in the dirt, they beat me and continuously threatened me. After having read me my rights, a person [a prison inspection judge] ordered them to change my handcuffs. They did so in front of him and just after taking me down to the car, they put other handcuffs on me, tightening them as much as possible, hurting my wrists and causing injuries which are still visible. They only took them off once we arrived at the police cells. Apart from the pain caused by the handcuffs, they beat me on the head and the ribs, and squeezed my testicles; they pretended to fire a gun, pressing the barrel against my head and firing several times. They beat me to the point of causing a sprained ankle. All that happened during the journey from Seville to Madrid. Once we arrived in Madrid, they made me walk, but my leg was no longer working and every time I tried, I fell down. They continued to beat me because of that, forcing me to try again each time I was on the ground, until they saw that I could no longer walk and they led me to the cells. There they told me they were leaving me for a moment so that my blood circulation could return to normal.
>
> "A little later, they came and forced me to get up, still with my eyes blindfolded. From then on, they began to beat my ankle, slapped me, hit me on the nape of the neck and made all kinds of threats. After a time, I can't say how many hours, they took me to casualty to have my ankle injury examined. Once I was there, I was diagnosed with a sprain, they put a bandage on me and advised me to put ice on it to relieve the pain and keep my foot raised.
>
> "When the Civil Guards took me back to the Civil Guard station, they beat me again, causing a further injury, and pushed me and hit me so much on the injured foot that they broke my big toe.

"They subjected me to a long session of questioning, including beatings, pulling out tufts of my beard and using an object which gave me electric shocks in the penis, the stomach and the chest. And as if that wasn't enough, they used another method - the plastic bag. This involved putting a plastic bag over my head, tightening it round my neck and suffocating me. They did this several times, together with the electric shocks. Each time I passed out, they left me alone for a while to recover, then they started again.

"After all of that, they took me to casualty, a different place from before, because the journey was much shorter. I guessed it must be close to the police station. During the journey, they constantly threatened me, telling me: 'You don't know where we are taking you'. 'You're going to the hills to dig your own grave ... .'

"When we got back, they continued to threaten me. This time, they mentioned my sister: if I didn't talk, they would go and fetch her and she would pay because of me - it was up to me ... .

"Then they started to make threats against my partner Maite Pedrosa (arrested at the same time as I was), that they were going to rape her, that she was in a very bad way, ... with threats like: 'we are filling the bath'. And that if I continued to show off (sic), they would give me the bath treatment. The beatings never stopped during the time I spent in the police station, especially blows to my sprained ankle, and beatings and slaps to the head.

"At the end, they told me that they were taking me to the National High Court to make a statement and that in the afternoon I would have to go back with them to look at some photos, and that the treatment would therefore depend on what I said in my statement in court.

"During almost all the time I was being questioned, I was blindfolded, and when I wasn't, they forced me to lower my head, even though I was able to see the head of one of them twice and I could recognize him. Alcalá de Henares prison, 7 April 1998."

2.6 At the end of his period in custody, on 25 March 1998, Mr. Azurmendi appeared before examining magistrate No. 6 of the National High Court in Madrid. He lodged a complaint relating to the torture to which he had been subjected during his time in custody and retracted his earlier statements. This complaint is still being investigated.

2.7 While in Madrid prison, Mr. Azurmendi was also examined by the prison medical services, and a court-ordered medical report was delivered on 18 October 1998. These medical reports and the testimony of a number of detainees arrested on the same day as Mr. Azurmendi corroborate his allegations of torture and ill-treatment.

2.8 After the complainant had been implicated in the statements made by Mr. Azurmendi on 23 and 24 March 1998, the Spanish procurator's office stipulated that proceedings against the complainant would be subject to the evidence. As the results were negative, Mr. Ismael Moreno Chamaro, central examining magistrate No. 2 attached to the National High Court in Madrid, issued an order on 29 October 1998 that the complainant should be imprisoned and committed for trial. On that basis, the judge issued a request for the extradition of the complainant on 22 December 1998. By means of a note verbale dated 10 March 1999, the Government of Spain, through its embassy, requested the French authorities to extradite the complainant. On 15 June 1999, she was placed in detention in Fresnes prison pending extradition. The request for extradition was heard in public session on 24 May 2000 by the first indictment division of the Paris Court of Appeal which, on 21 June 2000, ruled partially[c] in favour of extradition in respect of the acts described by Spain as 19 attempted terrorist murders.

2.9 The complainant emphasizes that the request for extradition did not contain a copy of the statement that Mr. Azurmendi made on 25 March 1998 to the examining magistrate of the National High Court. In that regard, the complainant's counsel argued before the indictment division of the Paris Court of Appeal that it was unacceptable that, since the charges carried very severe prison terms, the requesting State had not mentioned the statement in which Mr. Azurmendi retracted everything that he had said and also stated that he did not know the complainant.

2.10 Counsel also argued:

> "[T]he medical examinations carried out while Mr. Azurmendi was in custody and was being transported to the hospital casualty department, the statements made on 25 March 1998, the official medical observations recorded on his arrival at Madrid prison, the medical report provided on 18 October 1998, the complaint lodged and the testimony of certain persons detained the same day show that he was subjected to ill-treatment while being questioned by the Civil Guard. Such treatment, apart from being clearly in violation of domestic instruments in any State governed by the rule of law, is further prohibited by the international conventions that France has ratified, in particular by article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that no one shall be subjected to cruel, inhuman or degrading treatment. Still more specifically, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides (art. 15) that: 'Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.' In this case, the statements made by Mr. Azurmendi, who is established to have been subjected to ill-treatment while held in custody, clearly cannot serve as a legal basis for proceedings against [P.E.]."

2.11 The indictment division of the Paris Court of Appeal replied as follows in its decision of 21 June 2000:

> "In view of the fact that it is not the task of the court to find whether the factual elements cited by the requesting authority have been proven, but to consider whether those elements constitute a criminal offence in the requesting State and in the requested State; ... in view of the fact that, while it is true that Azurmendi implicated [P.E.], he did not do so as a result of violence but, according to the evidence supplied by the requesting State, in the Civil Guard station, in the presence of a lawyer; in view of the fact that the court cannot seek to secure the documents forming part of the Spanish proceedings in

> order to substitute itself for the authorities of the requesting State in their analysis; it is sufficient that, as in the present case, the court should possess sufficiently precise information to enable it to determine the existence of suspicions so as to allow it to apply the principle of dual criminality."

2.12 On 17 May 2000, the German section of Action of Christians for the Abolition of Torture (ACAT) wrote to the Government of France requesting it not to extradite the complainant to Spain. On 23 May 2000, many organizations, associations and public figures sent an open letter to the French authorities along the same lines.

2.13 On 29 September 2000, the Government of France issued a decree granting extradition of the complainant to the Spanish authorities. On 3 January 2001, the complainant appealed against the decree to the Council of State. In a statement of case presented to the Council of State, counsel for the complainant reiterated the arguments presented to the indictment division, adding:

> "[I]n response to the argument concerning a breach of French public order, the [French] Minister [of Justice] does not dispute any of the circumstances described by the plaintiff, in particular:
>
> "– The fact that Mr. Azurmendi's statements made while being questioned by the Civil Guard authorities, which, inter alia, implicated Ms. [P.E.], were subsequently retracted before the examining magistrate;
>
> "– That Mr. Azurmendi was transported to casualty at the end of his period in custody because he had been subjected to ill-treatment during questioning by the Civil Guard.
>
> "According to the administration's statement of case, Mr. Azurmendi's statements did not constitute a breach of French public order because they were taken freely in the presence of a lawyer from the Madrid bar. In fact, there is nothing to confirm that this was the case, or even that a lawyer was continuously present while he was held in custody, from the beginning to the end of the questioning.
>
> "So that, while a lawyer from the Madrid bar may have assisted the person concerned at some time while he was being held in custody, this circumstance in no way rules out the possibility that the suspicions against the plaintiff were gathered in a manner contrary to French public order."

The Council of State rejected this appeal by a decision dated 7 November 2001. The complainant was handed over to the Spanish authorities on the same day.

**The complaint**

3.1 The complainant considers that her extradition to Spain constitutes a violation of article 15 of the Convention insofar as the charges brought against her by the Spanish authorities were based on statements made as a result of torture.

3.2 Article 15 of the Convention is one of the corollaries of the absolute prohibition of torture on which the Convention against Torture is based. The first part of the article is designed to deprive the practice of torture of any value when inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession. In that context, statements obtained as a result of torture must be declared absolutely null.

3.3 This provision is applicable to any court or non-court proceedings, particularly penal or administrative proceedings. Hence it is applicable in this case to extradition proceedings.

3.4 The complainant holds that several criteria must be satisfied if a State party is to be found to have violated article 15 of the Convention:

(a) It must be established that the statement cited as evidence in the proceedings in question was obtained as a result of torture;

(b) The statement in question must be an essential element of the charges brought against the author of the communication;

(c) Article 15 of the Convention imposes an absolute obligation on the courts and authorities of the State in question to assemble and examine, in an objective, fair and thorough manner, all the elements needed to establish that the statement was obtained unlawfully;

(d) It follows from article 15 of the Convention that the statement at issue should be declared absolutely null by the courts and authorities of the State in question;

(e) It is also necessary, in extradition proceedings, to determine whether torture is practised in the requesting State, and to examine the circumstances in which the statement at issue was obtained and whether statements obtained as a result of torture are customarily accepted by the courts of the requesting State.

3.5 In this case, all these criteria have been satisfied:

3.5.1 According to the complainant, it has been established beyond all reasonable doubt that Mr. Azurmendi's statements cited as evidence in the proceedings in question were obtained as a result of torture.

3.5.2 As regards the assistance of a court-appointed lawyer while Mr. Azurmendi was being held in custody - the argument invoked by the State party to refute these allegations - the complainant emphasizes that, under Spain's special anti-terrorist legislation, Mr. Azurmendi was arrested and held in custody incommunicado, that is, cut off from any contact with a lawyer of his choice or a close relative. This status was extended even when he appeared in court on 25 March 1998.

3.5.3 The complainant explains in this regard that the machinery for protecting persons implicated in terrorist cases and held by the Spanish security forces is well known to be inadequate:

(a) Such persons have no access to a lawyer of their choice while in custody or even, in some cases, when appearing before the examining magistrate;

(b) During the period of custody, the court-appointed lawyer is present only when "official" statements are made before members of the Spanish security forces; the court-appointed lawyer is never present throughout the period of custody; specifically, he does not attend all the questioning sessions.[f]

3.5.4 In this regard, after considering the third periodic report submitted by Spain, on 18 and 19 November 1997, the Committee against Torture made the following concluding observations:

> "The Committee continued to receive frequent complaints of acts of torture and ill-treatment during the period covered by the report. … Notwithstanding the legal guarantees as to the conditions under which it can be imposed, there are cases of prolonged detention incommunicado, when the detainee cannot receive the assistance of a lawyer of his choice, which seems to facilitate the practice of torture. Most of these complaints concern torture inflicted during such periods. The Committee is also concerned about reports that although, in accordance with article 15 of the Convention, judges do not accept as incriminating evidence statements regarded as invalid because they have been obtained under duress or torture, they nevertheless accept those same statements as incriminating other co-defendants. … Consideration should be given to eliminating instances in which extended detention incommunicado and restrictions of the rights of detainees to be assisted by a defence lawyer of their choice are authorized."[g]

3.5.5 The observations made by the Committee against Torture on 9 November 1999 in connection with communication No. 63/1997 submitted by Josu Arkauz Arana against France should also be borne in mind. In this decision, which was made public on 1 December 1999, the Committee noted in particular:

> "[D]uring the consideration of the third periodic report submitted by Spain under article 19 of the Convention, it had expressed its concern regarding the complaints of acts of torture and ill-treatment which it frequently received. It also noted that, notwithstanding the legal guarantees as to the conditions under which it could be imposed, there were cases of prolonged detention incommunicado, when the detainee could not receive the assistance of a lawyer of his choice, which seemed to facilitate the practice of torture. Most of the complaints received concerned torture inflicted during such periods. Similar concerns had already been expressed during the consideration of the second periodic report by the Committee, as well as in the concluding observations of the Human Rights Committee regarding the fourth periodic report submitted by Spain under article 40 of the International Covenant on Civil and Political Rights. Furthermore, the European Committee for the Prevention of Torture (CPT) also reported complaints of torture or ill-treatment received during its visits to Spain in 1991 and 1994, in particular from persons detained for terrorist activities. The CPT concluded that it would be premature to affirm that torture and severe ill-treatment had been eradicated in Spain."[h]

3.5.6 After considering the fourth periodic report submitted by Spain, the Human Rights Committee emphasized, in its observations dated 3 April 1996 (CCPR/C/79/Add.61):

> … "12. The Committee expresses concern at the maintenance on a continuous basis of special legislation under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a

lawyer of their own choosing and are judged by the Audiencia Nacional without possibility of appeal. The Committee emphasizes that these provisions are not in conformity with articles 9 and 14 of the Covenant. ...

"...

"E. Suggestions and recommendations

"...

"18. The Committee recommends that the legislative provisions, which state that persons accused of acts of terrorism or suspected of collaborating with such persons may not choose their lawyer, should be rescinded. It urges the State party to abandon the use of incommunicado detention and invites it to reduce the duration of pre-trial detention and to stop using duration of the applicable penalty as a criterion for determining the maximum duration of pre-trial detention."

3.5.7 Similarly, CPT considers that there are serious inadequacies in protection against torture and other severe ill-treatment of persons held in custody by the Spanish security forces as a part of anti-ETA operations. In that regard, CPT places particular emphasis on recognition of three rights denied by the Spanish authorities to persons held by the security forces:

(a) The right of the person concerned to inform a close relative or another third party of his or her situation;

(b) The right of access to a lawyer of one's choice;

(c) The right to be examined by a doctor of one's choice.

In the view of CPT, these rights constitute three fundamental safeguards against ill-treatment that should apply from the outset of custody (that is, as soon as the security forces deprive the person concerned of his or her freedom of movement).[i]

3.5.8 According to the complainant, the statement at issue is the essential element of the charge against her. It is clear from a study of the proceedings that the sole item of evidence produced by the Spanish authorities in requesting the extradition of the complainant for the third time is based on the statements made by Mr. Azurmendi on 23 and 24 March 1998 while being held in custody by the Civil Guard. It was on the basis of these statements obtained as a result of torture that the indictment division of the Paris Court of Appeal ruled in favour of extradition on 21 June 2000 and the Government of France issued an extradition decree on 29 September 2000.

3.5.9 According to the complainant, the French authorities and courts failed to assemble and examine, in an objective, fair and thorough manner, all the elements needed to establish that the statement at issue was obtained unlawfully. It is clear that the complaint concerning torture made by Mr. Azurmendi on 25 March 1998 when he appeared before the examining magistrate was ignored by the French courts and authorities. Similarly, the medical evidence establishing beyond a doubt that the statements made by Mr. Azurmendi while in custody were obtained as a result of torture were systematically ignored by the French authorities and courts. Moreover, the French courts systematically refused to approach the Spanish authorities in order to obtain any additional information that might have confirmed that the statements in question had not been obtained as a result of torture.

3.5.10 According to the complainant, Mr. Azurmendi's statements were not declared to be absolutely null by the French authorities and courts. Although it has been established that Mr. Azurmendi's statements were obtained as a result of torture, these statements form the basis of the 21 June 2000 ruling handed down by the indictment division of the Paris Court of Appeal in favour of the Spanish authorities' third request for extradition, and the extradition decree issued by the French Government on 29 September 2000. Yet, under article 15 of the Convention against Torture, these unlawfully obtained declarations should have been declared absolutely null.

3.5.11 Lastly, it is also necessary in extradition proceedings to determine whether torture is practised in the requesting State, and whether statements obtained as a result of torture are customarily accepted by the courts of the requesting State.

3.5.12 According to the complainant, it has been established that the infliction of torture and ill-treatment by the Spanish security forces is an "administrative practice" incompatible with the Convention against Torture, since it involves the repetition of acts that are contrary to article 1 of the Convention, as well as official tolerance on the part of the authorities. The practice of torture and ill-treatment has been corroborated in numerous reports on Spain by international bodies over many years, and persists to the present day. In its conclusions relating to the second periodic report of Spain, the Committee against Torture expressed its concern at "the increase in the number of complaints of torture and ill-treatment, at delays in the processing of such complaints and at the impunity of a number of perpetrators of torture".[j] As CPT emphasized, "it would be premature to conclude that the phenomenon of torture and severe ill-treatment had been eradicated" in Spain.[k]

3.5.13 The risks of torture and ill-treatment are also corroborated by many recent reports from international bodies concerning Spain:

(a) The views and recommendations of the Human Rights Committee during its consideration of reports submitted by Spain under article 40 of the International Covenant on Civil and Political Rights;

(b) The reports of CPT concerning visits to Spain. In its reports, CPT notes that torture and other very severe forms of ill-treatment are still practised, particularly by the members of the Civil Guard against Basque nationals suspected of belonging to or collaborating with ETA. In the report on its visit from 22 November to 4 December 1998, CPT notes that "those allegations involved blows to various parts of the body and, in some cases, more serious forms of physical ill-treatment, including sexual assault of female detainees by male police officers, and asphyxiation by placing a plastic bag over the head".[l] In certain cases, the reports include medical certificates consistent with the victims' allegations;

(c) The reports of Mr. Kooijmans and Mr. Rodley, United Nations Special Rapporteurs on the question of torture;

(d) The views of the Committee against Torture during its consideration of periodic reports submitted by Spain under article 19 of the Convention. On 9 November 1999, the Committee communicated its views concerning communication No. 63/1997 submitted by the complainant, Josu Arkauz Arana against France (see paragraph 3.5.5);

(e) Reports prepared by Amnesty International, the Association for the Prevention of Torture, the World Organization against Torture and International Prison Watch. Moreover, it should be pointed out that, in 1990, the Government of Spain broke its agreement with the International Committee of the Red Cross (ICRC), which permitted ICRC to visit political detainees in Spain, particularly many Basque prisoners. In spite of the many requests made to the Spanish authorities, those authorities have not yet re-established the agreement.

3.5.14 Moreover, reliable reports from international human rights bodies indicate that the ill-treatment regularly inflicted by Spanish officers, intentionally and with professionalism, in order to obtain confessions or information or to cause terror, are serious enough to be classified as torture under article 1 of the Convention against Torture and the jurisprudence of the European Court of Human Rights.

3.5.15 The impunity enjoyed by torturers on the part of the Spanish authorities is an additional risk factor. Indeed, such impunity encourages perpetrators of torture and ill-treatment to persist in their acts of violence. Often, victims' complaints are filed away and never followed up; the proceedings are very long; sentencing of torturers is very rare; when sentences are handed down by Spanish courts, torturers are most often pardoned by the authorities; certain torturers have even been promoted. The fact that officers who practise torture are not punished creates a feeling of impunity, which encourages the persistence of the practice of torture.

3.5.16 As the Committee against Torture has already noted, statements obtained as a result of torture are accepted by Spanish courts, particularly the National High Court, which is a special court that deals with crimes and acts of terrorism. Moreover, the judgements handed down by the National High Court are not subject to appeal, in contravention of article 14, paragraph 5, of the International Covenant on Civil and Political Rights; only an appeal for cassation is possible before the Supreme Court, which refuses to re-examine the lawfulness of the evidence accepted in first instance by the National High Court.

3.5.17 Finally, concerning the situation in Spain, it should be recalled the Committee against Torture stated in its most recent concluding observations[m] that, pursuant to article 2, paragraph 2, of the Convention, "no exceptional circumstances whatsoever, whether … internal political instability or any other public emergency, may be invoked as a justification of torture". Thus, the situation of acute conflict in the Basque area of the country cannot be invoked to justify the practice of torture by the Spanish security forces and the use by Spanish courts of evidence obtained as a result of torture.

**The State party's observations**

4.1 The State party submitted its views in a note verbale dated 29 April 2002.

4.2 The State party notes that the complainant had been arrested for possession of weapons and was suspected of being a member of ETA. The complainant was sentenced by a judgement of the Paris Correctional Court to two and a half years' imprisonment for offences involving the transport and possession of weapons, the holding of false administrative documents and participation in a conspiracy with a view to preparing an act of terrorism.

4.3 The first request to extradite the complainant, dated 15 September 1997,[a] was based on her membership of ETA and on the fact that she had created the infrastructure of the "Madrid Commando", which carried out attacks in the Spanish capital. For this reason, the complainant had been put in detention pending extradition in Fresnes prison on 21 October 1997. By a judgement of 18 March 1998, the indictment division of the Paris Court of Appeal issued a ruling in favour of her extradition and the Court of Cassation rejected her appeal against that ruling on 23 June 1998.

4.4 The complainant was the subject of an additional extradition request on 10 March 1999. While the examination of that additional request was in progress and criminal proceedings were being undertaken by the French courts, the authorities of the State party decided not to proceed directly with the first extradition. According to the indictment and the evidence produced by the Spanish authorities in support of that additional extradition request:

> "[A] complaint was brought against P.E., as a member of the terrorist organization ETA, for having, together with other members of that organization, in Madrid, sought information on, monitored and verified the route taken by a van belonging to the general staff of the Spanish air force, with the aim of carrying out an act of violence. On 30 November 1993, an Opel vehicle had been stolen and its number plates had been changed. The person whose extradition is sought, together with her accomplices, constructed an explosive device consisting of two '*casseroles*', each containing an explosive charge of approximately 45 kilos. On 24 January 1994, two of her accomplices drove the car bomb to the intersection of the Paseo of La Ermita and Avenida del Manzanares in Madrid. On 25 January 1994, at approximately 0800 hours, as the military van passed by, Angel Azurmendi Penagarikano activated the device without managing to explode it. He then fled together with Arri Pascual d'Alvaro … . Several moments later, the police attempted to carry out a controlled explosion. They failed, and the device exploded, injuring 19 persons and causing serious damage to buildings and parked vehicles."

4.5 Following the additional request, the complainant was placed in detention pending extradition on 15 June 1999. After ordering additional information with a view to verifying whether part of the accusation had not been subject to a statute of limitations, on 21 June 2000 the indictment division ruled in favour of extradition for acts qualified by the requesting State as attempted terrorist murder, after having found that the statute of limitations for prosecution had expired under French law.

4.6 The complainant requested her release on 21 October 1997. The request was granted by the indictment division on 22 March 2000. In the context of the additional extradition request, the complainant also requested her release on 4 September 2000. The request was granted on 18 October 2000, but accompanied by a measure that placed the complainant under judicial supervision.

4.7 In those circumstances, the Prime Minister granted extradition on the basis of the first extradition request and the additional request, in a decree dated 29 September 2000. The complainant was handed over to the Spanish authorities on the day on which the Council of State took its decision to reject her appeal against the decree, on 7 November 2001.

4.8 With regard to the merits of the complaint, the State party notes that the sole complaint made by the complainant deals only with the additional extradition request. It in no way questions the first extradition request, which was based on separate facts that in themselves would have been sufficient to justify a decision to extradite the complainant, after the indictment division ruled in favour of extradition on 18 March 1998. Thus, the extradition order itself had not been questioned, only the fact that the State party's decision to extradite the complainant had not been accompanied by a reservation concerning the facts related to Mr. Azurmendi's statements.

4.9 Under the State party's legislation, the Act of 10 March 1927 applies in cases of requests for extradition made by Spain. Pursuant to article 16 of the Act, the indictment division must verify whether or not the legal conditions for extradition have been met. In this regard, it must verify whether or not the file has been properly prepared, whether or not there has been an "obvious error" with respect to the identity of the requested individual and whether it is clear that the individual could not have participated in the acts of which he/she is accused. However, the indictment division, pursuant to a general principle of French extradition law, may not assess whether or not prosecution is founded or if all of the charges are sufficient.

4.10 The indictment division then issues a ruling that may, if it is favourable, be accompanied by reservations or be partially favourable. If the opinion is unfavourable, it is final. Any review that the Court of Cassation may later conduct relates solely to the procedure and the rules governing the procedure.

4.11 On the basis of a favourable ruling by the indictment division, the Government adopts, when necessary, an extradition decree, which is subject to appeal before the Council of State, which monitors "procedural irregularities of the extradition decree and … the legality of the extradition measure in domestic law in the light of international law and international conventions, in order to verify whether, particularly after the indictment division has examined the case, the Government had been able to decide legally that conditions for extradition, for the offences involved, had been met". The State party emphasizes that it was in this context that, on 15 February 1999, the Council of State annulled an extradition decision on the grounds of a breach of article 3 of the Convention against Torture.

4.12 With regard to the complainant's allegations that Mr. Azurmendi's statements had been obtained as a result of torture, the indictment division decided that "while it is true that Azurmendi implicated [P.E.], he did so not under duress but, as indicated in the evidence submitted by the requesting State, on Civil Guard premises, in the presence of a lawyer". For its part, the Council of State, on the basis of the same evidence considered that those allegations had not been accompanied by any prima facie evidence. The Council of State also stressed "that it follows from the general principles of the law applicable to extradition that it is not up to the French authorities, except in the case of an obvious error, to rule on the correctness of the charges against the person claimed; that, in the case at hand, it does not appear that an obvious error has been committed both with respect to the offence of belonging to an armed group and with respect to the crime of complicity in attempted murder, of which Ms. [P.E.] has been accused".

4.13 The State party maintains that the State party's obligation under article 15 of the Convention applies only if it is "established" that the statement in question had been obtained as a result of torture. The wording of this provision is very different from that of article 3 of the Convention, which prohibits a State party from returning or expelling a person to another State where there are substantial grounds for believing that he/she "would be in danger" of being subjected to torture. In the present case, the complainant has not established that Mr. Azurmendi's statements were obtained as a result of torture, and the presence of a lawyer at his side during custody casts sufficiently serious doubt on those allegations.

4.14 Moreover, the State party maintains that article 15 of the Convention in no way binds it to make inquiries of a third State in order to assess the validity of allegations of torture. With regard to extradition, it has never been accepted that a State should interfere in the course of adjudicatory proceedings taking place in a third country. The burden of proof can therefore fall only on the author of the allegations.

4.15 Since the obligation contained in article 15 applies only to situations where it is established that a statement has been obtained as a result of torture, the proof can result from a sufficiently consistent body of circumstantial evidence. In the case at hand, it should be noted that the circumstantial evidence adduced by the complainant is tenuous. She refers to a consultation in a hospital following custody and Mr. Azurmendi's retraction the next day before the examining magistrate. The complainant did not supply the least prima facie evidence of the deterioration of Mr. Azurmendi's health during custody or of a causal link between the deterioration of his health and the physical abuse to which he was allegedly subjected. Mr. Azurmendi's retraction before the examining magistrate may be explained by the fact that, at the time, he was not subjected to any pressure and that he therefore was able very quickly to diminish the significance of his previous statements.

4.16 With regard to the presence of a court-appointed lawyer and the fact that Spanish legislation does not permit persons held in custody to choose their lawyer, the fact that the lawyer who was present when the statements were made was appointed by the court does not in itself constitute grounds for suspecting him of having seriously failed in his professional duty by not reporting, immediately or subsequently, that the statements had been obtained under torture.

4.17 In addition to the fact that the complainant's additional explanations concerning custody conditions in Spain are very general, the State party emphasizes that communications containing allegations similar to those made by the complainant have already been rejected by United Nations bodies. Thus, in opinion No. 26/1999 (see E/CN.4/2001/14/Add.1), the Working Group on Arbitrary Detention considered:

> "[I]ncommunicado detention, when justified by insuperable problems in the investigation of the offence concerned, especially when crimes as serious as terrorism are involved, cannot in itself be regarded as contrary to the Covenant. … The Group considers charges of terrorism and conspiracy to represent an exceptional circumstance which, according to

> Spanish legislation, authorizes incommunicado detention for a brief period. … The same may be said of the right to choose a legal counsel, to be assisted by counsel during the trial and to meet with counsel, as set forth in the above-mentioned Body of Principles, adopted by the General Assembly, by consensus, in 1988. As Mikel Egibar did not ask to be interrogated in the presence of a lawyer of his own choosing and had accepted the presence of a court-appointed lawyer, his rights were not violated, especially since, as soon as the incommunicado detention was ordered, he was able to designate a lawyer whom he has kept throughout the rest of the proceedings. … Secrecy of inquiry proceedings in the early stages of the investigation is a measure authorized not only by Spanish law, but by nearly all bodies of legislation, as a measure designed to avoid the results of the trial being affected. It does not infringe the rights of the defence, which at the trial stage will have access to all procedural documents and will be able to challenge any irrelevant or illegally obtained evidence. Thus it cannot be considered that any right essential to the defence of the accused has been violated."

In the present case, the complainant could not claim that Mr. Azurmendi was deprived of his right to choose a lawyer.

4.18 Finally, with regard to the Committee's Views in the Arkauz Arana case, the State party maintains that that complaint differed from the present complaint in that it claimed a violation of article 3, and not of article 15, of the Convention, which explains why the Committee provided a long list of reasons that should have led the State party to fear that the author might be subjected to torture if he were deported and why the Committee criticized France for having carried out the deportation, which was later found to be illegal by French courts and which entailed a direct handover from police to police without respect for the detainee's rights; this is not the case in the present complaint, where an extradition procedure was carried out in accordance with the relevant regulations and where the complainant had in no way been deprived of asserting her rights before French courts.

### The complainant's comments

5.1 In a letter of 23 June 2002, the complainant commented on the State party's observations on the merits of the complaint. In her comments, the complainant maintains her allegations and reiterates the arguments set out in her complaint.

5.2 In order to demonstrate the relevance of her arguments that the States parties to the Convention must respect article 15 of the Convention, including in cases of extradition or expulsion, the complainant draws the Committee's attention to the fact that two other European Union countries, Belgium and Portugal, recently refused to extradite three alleged members of ETA pursuant to article 15 of the Convention on the grounds that the requests for extradition were based on evidence obtained as a result of torture.

5.3 The complainant considers that the claim that French courts were under no obligation to make inquiries of a third State in order to assess the validity of the allegations of torture is an extremely restrictive interpretation, which is contrary to the purpose of the Convention. Such an interpretation undermines the founding principle of the Convention, namely the absolute prohibition of torture, and one of its major corollaries, the unlawfulness of evidence obtained as a result of torture. Since the present case involves a serious and well-founded allegation that evidence obtained as a result of torture was used as the basis for a procedure, the State party must use the means at its disposal to ascertain the veracity of such allegations. In the case in question, the French courts could, for example, have requested additional information from the Spanish authorities, since this procedure is quite common in extradition cases. Such a request would have allowed the French authorities to assemble and examine, in an objective, fair and thorough manner, all the elements needed to establish that the aforementioned statement had been obtained unlawfully.

5.4 With respect to the elements needed to support the allegations that Mr. Azurmendi had made his statements as a result of torture, the complainant refers to a CPT report that deals with the very period during which the statements at issue were made and according to which:

> "[B]oth before and during the visit, the CPT received reports from other sources containing a considerable number of allegations of ill-treatment by the National Police, the Civil Guard and the Basque Autonomous Police (the Ertzaintza) relating to periods of custody during 1997 and 1998. Those allegations involved blows to various parts of the body and, in some cases, more serious forms of physical ill-treatment, including sexual assault of female detainees by male police officers, and asphyxiation by placing a plastic bag over the head. In certain cases, the reports included medical certificates recording injuries or conditions consistent with the allegations made by the persons concerned.
>
> "Many of the above-mentioned reports related to persons detained in the Basque Country or the Navarre region as terrorist suspects or in connection with terrorist-linked public order offences. It would appear that, in a number of those cases, the persons concerned or their relatives have lodged formal complaints, including before the relevant judicial authorities, about the manner in which they have been treated."[a]

5.5 More precisely, and contrary to the State party's assertions, in his report submitted on 2 February 2000 (E/CN.4/2000/9, para. 917), the Special Rapporteur on the question of torture indicates that:

> "Mikel Azurmendi Peñagarikano was arrested in Seville on 21 March 1998 by the Guardia Civil and is currently in the Madrid-2 prison (Alcalá de Henares). Mr. Azurmendi has alleged that during his detention he was subjected to ill-treatment and torture which involved being stamped on and kicked, blows to the ribs, head and testicles, electrodes on the penis, stomach and chest, mock executions, being prevented from seeing, and threats to his family and his partner Maite Pedrosa, who was also arrested. Since entering prison, Mr. Azurmendi has reportedly been suffering from ankle pains which have prevented him from engaging in any physical activity."

5.6 With regard to the presence of a court-appointed lawyer when the statements at issue were made, the complainant also refers to a more recent report of the Special Rapporteur on the question of torture, according to which:

> "It has been noted that most of them have allegedly been subjected to interrogation without the presence of a lawyer or have been assigned a lawyer by the court who, at the time when their statements were taken, allegedly agreed with their detention. In this regard, the Special Rapporteur has been informed that the Criminal Procedures Act

provides that, during preventive incommunicado detention, the lawyer is appointed by the court; that the detainee may not consult with him in private; and that family members or any other person with whom the detainee wishes to communicate are informed neither of their detention nor of the place where they are being held" (translated from Spanish of E/CN.4/2002/76/Add.1, para. 1390).

5.7 The complainant also emphasizes that the French authorities did not hesitate to accept the statements made by Mr. Azurmendi on 23 and 24 March 1998 when he was in custody, while they completely disregarded his later statements before the examining magistrate. The authorities of the State party therefore attached an irrebuttable presumption of validity to the confessions obtained on 23 and 24 March 1998.

## Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not objected to the admissibility of the communication. It therefore considers that the communication is admissible. Since both the State party and the author have made observations as to the merits of the communication, the Committee proceeds to the examination to the merits of the case.

6.2 The Committee notes the complainant's allegations concerning the circumstances in which Mr. Azurmendi's statements were made, the evidence that she adduced in support of the allegations and the arguments put forward by the parties concerning the obligations of States parties under article 15 of the Convention.

6.3 The Committee considers in this regard that the generality of the provisions of article 15 derive from the absolute nature of the prohibition of torture and imply, consequently, an obligation for each State party to ascertain whether or not statements constituting part of the evidence of a procedure for which it is competent have been made as a result of torture. The Committee finds that the statements at issue constitute part of the evidence of the procedure for the extradition of the complainant, and for which the State party is competent. In this regard, in the light of the allegations that the statements at issue, which constituted, at least in part, the basis for the additional extradition request, were obtained as a result of torture, the State party had the obligation to ascertain the veracity of such allegations.

6.4 The Committee notes that the French authorities, both judicial and administrative, examined the complainant's allegations and found that they had not been sufficiently substantiated. The Committee also notes that Mr. Azurmendi's complaint concerning the treatment to which he was allegedly subjected during custody is still being considered by the Spanish judicial authorities, which are expected to rule, at the end of the judicial proceedings, on whether Mr. Azurmendi's confession was obtained in an unlawful manner. The Committee considers that only this judicial ruling should be taken into consideration, and not the simple retraction by Mr. Azurmendi of a confession which he had previously signed in the presence of counsel.

6.5 The Committee reiterates in this regard that it is for the courts of the States parties to the Convention, and not the Committee, to evaluate facts and evidence in a particular case. It is for the appellate courts of States parties to the Convention to examine the conduct of the trial, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, or that the trial judge had clearly violated his obligation of impartiality.

6.6 The Committee, bearing in mind that it is for the author to demonstrate that her allegations are well founded, considers that, on the basis of the facts before it, it cannot conclude that it has been established that the statements at issue were obtained as a result of torture.

6.7 Accordingly, the Committee is of the opinion that the facts before it do not enable it to establish that there has been a violation of article 15 of the Convention.

## Notes

[a] As the complainant had been extradited to Spain on 7 November 2001, the State party was unable to comply with the Committee's request of 5 December 2001 regarding interim measures.

[b] The complainant does not specify the exact date of her arrest.

[c] In this regard, the complainant stresses that her relations with her partner have always remained strictly at the personal level.

[d] This is the request referred to by the State party as an "additional request" - see paragraphs 4.4 ff.

[e] The State party explains in its observations (see paragraphs 4.1 ff.) why the ruling is partially in favour of extradition.

[f] The complainant explains that "the very manner in which the period of custody as a whole takes place offers no guarantees that the detainee can make a statement freely, even if a court-appointed lawyer is present when 'official' statements are made. According to reliable testimony from all the victims of torture and serious ill-treatment in Spain, the nature of the period in custody is as follows:

"(a) Torture and ill-treatment begin from the time of arrest, including during transfer to the facilities of the Spanish security forces;

"(b) During the initial hours and initial days of the period of custody, violence is used to condition the detainee so that he or she will make the statements the torturers wish; the violence and the questioning take place continuously, day and night, without let-up; the methods customarily used by the members of the Spanish security forces, separately or in combination, cause pain and acute physical and/or mental suffering and can be described as torture within the meaning of article 1 of the Convention against Torture. They include: repeated beatings, electric shocks, *la bolsa* (asphyxiation using a plastic bag placed over the head), exhausting physical exercise, deprivation of sleep and/or food, sexual abuse, including rape, humiliating and degrading treatment, constant threats and insults against the individual and/or his or her family;

"(c) When the detainee's physical resistance and morale have been broken and destroyed, the required statements are dictated by the interrogators and the detainee must learn them by heart; a number of sessions are held to ensure that the person will make the statement required. If the person resists or does not make the required statement before the court-appointed lawyer, the torturers threaten the person being questioned with further or resumed torture. In particular, before the 'official' statement is made, the person is threatened with further torture if he or she does not recite the 'lesson' to the letter when making the statement in the presence of the court-appointed lawyer. If the statement is not 'right', the torture starts again until the torturers obtain the result they desire.

"... In these circumstances, it has been established that the presence of a court-appointed lawyer while official statements are being made before the Spanish security forces by no means constitutes sufficient protection that will guarantee that the statement has been made freely. Moreover, whenever persons have been tortured in Spain while in custody, they have made such statements in the presence of a court-appointed lawyer, which has never prevented torture from taking place or the statements from being obtained as a result of violence. In addition, the totality of the testimony and the observations of human rights protection bodies show that the court-appointed lawyer displays a passive attitude and that, even if the person being questioned bears traces of ill-treatment or appears disoriented and extremely tired, the court-appointed lawyer in most cases fails to report the fact."

[g] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), chap. IV, sect. F.

[h] Ibid., *Fifty-fifth Session, Supplement No. 44* (A/55/44), annex VII, sect. A.2, para. 11.4.

[i] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 22 April 1994 (CPT/Inf (96) 9 (Part 2)), para. 58.

[j] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44* (A/48/44), chap. IV, para. 457.

[k] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 June 1994 (CPT/Inf (96) 9 (Part 3)), para. 5.

[l] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November to 4 December 1998 (CPT/Inf (2000) 5), para. 12.

[m] See chapter III of the present document.

[n] The State party does not mention the existence of another, earlier "first" extradition request, which the complainant refers to in paragraph 2.2.

[o] Report to the Spanish Government, op.cit. at note l.

## Complaint No. 197/2002

Submitted by: U.S.[a]

Alleged victim: U.S.

State party: Finland

Date of complaint: 7 January 2002 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 May 2003,

Having concluded its consideration of complaint No. 197/2002, submitted to the Committee against Torture by Mr. U.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. U.S., a Sri Lankan citizen, currently residing in Finland and awaiting deportation to Sri Lanka. He claims that his forced return to Sri Lanka would constitute a violation by Finland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 10 January 2002, the Committee forwarded the communication to the State party for comments and requested it, under rule 108, paragraph 1, of its rules of procedure not to return the complainant to Sri Lanka while his communication was under consideration by the Committee. The State party has acceded to this request.

### The facts as submitted by the complainant

2.1 The complainant was a member of the People's Liberation Organization of Tamil Eelam (PLOTE) until 1985, when the organization was forbidden by the Liberation Tigers of Tamil Eelam (LTTE). In 1985, LTTE arrested the complainant and detained him for four months, during which he was interrogated about the location of PLOTE weapons. Subsequently, LTTE interrogated him on several occasions.

2.2 During this period, the complainant was working as a bus conductor and travelling between areas controlled by LTTE and by the Sri Lankan army. In view of his occupation and the fact that he was no longer a member, PLOTE suspected him of cooperating with LTTE and informed the Sri Lankan army of their suspicion.

2.3 In March 1987, the complainant was arrested by the Sri Lankan army and detained for almost two years. During his detention, the complainant was allegedly tortured on a regular basis for a period of six months. He was beaten, kicked, hung in the "chicken position" where he was left to hang from his left shoulder, his genitals were "injured", his hands were burned with a hot object, and he was given electrical shocks while cold water was poured over him.

2.4 After his release on 2 January 1989, the complainant was rearrested and interrogated three or four times, for up to three days each, by the Indian Peace Keeping Force (IPKF). He was also interrogated by the LTTE in order to find out what he had told IPKF about members of LTTE.

2.5 In June 1989, the complainant escaped to Germany, where he applied for asylum. His application was rejected, and he immediately attempted to go to France. French police arrested him and returned him to Germany. From Germany, he was returned to Sri Lanka in July 1989. On his return, he stayed in the LTTE-controlled area of Jaffna until 1995. He was interrogated several times by LTTE to find out whether he had any connections with PLOTE.

2.6 In 1996, after the Sri Lankan army occupied Jaffna, the complainant escaped to Vanni, where he lived with relatives, and then moved on to Hatton. During his time in Hatton, he was arrested twice by the Sri Lankan army, as he was new in the area. In 1998, he was arrested by the Sri Lankan police and detained for three months on suspicion of being an LTTE member. During his detention he was severely beaten; he remains scarred on his lips and behind his ear, as a result of being hit by a gun. In March 1998, after bribing the police, he was released.

2.7 After his release, the complainant escaped through Russia to Finland where he arrived on 21 December 1998. He immediately applied for asylum. On 12 February 2001, the Directorate of Immigration rejected his application and issued a deportation order against him. On 13 November 2001, the Helsinki Administrative Court rejected his appeal. The complainant then applied for leave to appeal and suspension of the deportation order to the Supreme Administrative Court. On 31 December 2001, his application was rejected.

2.8 The complainant underwent several physical and psychological examinations after his arrival in Finland. He has submitted six medical reports, three on his physical condition and three on his psychological state, two of them refer to scars on his lip and behind his left ear. A third states that he suffers from post-traumatic stress disorder, that he has a shoulder injury which fits the description of having been hung from one arm, and that he has mental and physical traumas and scars which were "possibly caused by torture".

## The claim

3.1 The complainant claims to have exhausted domestic remedies with the dismissal of his application by the Supreme Administrative Court for leave to appeal against the deportation order.[b]

3.2 The complainant claims that there are substantial grounds to believe that he would be subjected to torture if returned to Sri Lanka, in violation of article 3 of the Convention. He stresses that the human rights situation in Sri Lanka continues to be poor, particularly as concerns members of the Tamil population, and that persons suspected of LTTE membership are in danger of disappearing and being arbitrarily detained and tortured.

**The State party's observations on the admissibility and merits**

4.1 On 8 March 2002, the State party submitted that it has no objections to the admissibility of the case. On 9 July 2002, it submitted its observations on the merits. The State party contests the complainant's version of the facts as partly inaccurate, in particular his statements relating to his application for asylum in Germany and the events thereafter. It directs the Committee to the decision of the Directorate of Immigration which is alleged to refer to a number of inconsistencies in the complainant's description of events. The State party submits that the complainant's claims have been considered fairly in the domestic proceedings. It refers to particular asylum cases where the Supreme Court repealed its decision on deportation, to demonstrate that every case is assessed on its relevant circumstances.

4.2 By decision of 22 October 2001, the Directorate of Immigration assessed the complainant's personal situation. It found that the course of events from 1983 to 1989 had no immediate impact on the complainant's decision to leave his country of origin. According to the complainant, he returned to his home town, Jaffna, after his application for asylum had been refused by the German authorities. He resided there without problems until 1996, when the Sri Lankan army occupied Jaffna and most of the local residents had to move to Vanni. The alleged torture, which took place approximately 10 years before the complainant arrived in Finland, does not as such provide substantial grounds for believing that the complainant would still be in danger of being subjected to torture.

4.3 The State party submits that the arrests which, according to the complainant, took place in 1998 give no reason to believe that the Sri Lankan authorities would be particularly interested in the complainant's activities, as, according to the complainant himself, they were due to the fact that he was new in the area and a suspected LTTE militant. The State party notes that, upon release after his second arrest, he continued to stay two more weeks in Hatton, where he had been arrested, and thereafter in other Government-controlled areas, until he left the country. The State party concludes that there is no indication that the complainant is personally targeted by the Sri Lankan authorities.

4.4 The State party emphasizes that since the end of the 1980s the complainant has not been politically active, nor has he participated in the activities of LTTE. Thus, there are no substantial grounds for believing that he would be in danger of being subjected to torture in his country of origin.

4.5 Although the State party concedes that the medical reports largely support the complainant's statements concerning his injuries, it argues that they indicate that some healing has already occurred, and that the complainant no longer requires anti-depression medication. It acknowledges that he still needs regular psychiatric treatment and physiotherapy, but submits that the relevance of the medical reports must be assessed in conjunction with the other facts of the case.

4.6 The State party submits that the complainant does not display symptoms that could not be treated in his country of origin, and that his state of health is no obstacle to the enforcement of the deportation decision. Considering that the events which allegedly affected the complainant's health took place in the 1980s, his state of health does not provide substantial grounds for believing that he would be in danger of being subjected to torture in his country of origin.

4.7 The State party submits that, in the past few years, the human rights situation in Sri Lanka has significantly improved. It refers to a document prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 1999 for the European Union High Level Working Group on Asylum and Migration, which stated that asylum-seekers who have not been found to fulfil refugee criteria may be returned to Sri Lanka. It refers to the ceasefire reached on 23 February 2002, with which the armed forces of Sri Lanka and LTTE have since complied. Since then, residents need no longer report at military checkpoints. It also refers to a statement by a UNHCR representative of 21 May 2002, according to which 71,000 Tamil refugees returned home that year, more than half of whom returned to the Jaffna area. In the State party's view, therefore, in light of the continuing improvement in the situation in Sri Lanka there is no foreseeable, real and personal risk that the complainant will be tortured on return.

## Complainant's comments on the State party's submission

5.1 In his response, the complainant reiterates the facts as stated in his initial submission and provides new information. He submits that in August 1985, he buried arms belonging to the Eelam Liberation Organization (TELO), another organization banned by LTTE, in the garden of his family home. As LTTE in effect controls the lives of Jaffna residents, the complainant is afraid of the serious consequences both he and his family will face should LTTE receive information about these arms. He claims that LTTE considers the hiding of weapons and ammunition as a serious offence against the organization and would react harshly to such an act. In addition, as this act constitutes a crime under Sri Lankan law, he risks being prosecuted by the authorities. He claims that it was because of fear that he did not provide this information during the asylum procedure. To explain why he brought the matter only at this stage, the complainant cites the jurisprudence of the Committee stating that a victim of torture cannot be expected to give a full and coherent account of his past experiences during the asylum procedure. He also refers to the fact that UNHCR accepts that a person who, owing to his experiences, was afraid of the authorities in his country of origin may be distrustful of all authorities.

5.2 In addition, the complainant submits that after escaping from Sri Lanka he received information that some of his Tamil friends had been killed, some had joined the army and some had left Sri Lanka. PLOTE was disbanded in 2000, when its leader was assassinated in Vavuniya. He also submits that as he does not have a national identity card he will be placed in an extremely risky situation, as demonstrated by an April 2002 report of the United Kingdom Home Office Immigration and Nationality Directorate.

5.3 On the current human rights situation in Sri Lanka, the complainant denies that the situation has improved significantly and cites to this effect a report of Human Rights Watch (July 2002) and the United States Department of State Country Report on Human Rights Practices, 2001. According to the former report, there has been little formal attention to human rights concerns in the context of the peace process, in spite of the fact that the civil war has been driven by grave abuses of human rights committed by all sides. Most of the hundreds of detainees are Tamils arrested on suspicion of being linked with LTTE; the memorandum of understanding is not a human rights instrument and there has been evidence of continuing abuse since its acceptance. According to the latter report, there have been serious human rights problems in some areas and the ongoing war with LTTE has continued to lead to serious human rights abuses by both sides. The security forces and police continue to torture and mistreat detainees in police custody and prisons, in particular Tamils suspected of supporting LTTE. For these reasons, the complainant expresses the view that there is no credible evidence that the human rights situation has permanently and significantly changed or that gross, flagrant or mass violations of human rights no longer occur in Sri Lanka.

5.4 With respect to the medical reports, the complainant acknowledges that some healing has occurred but that this is immaterial in assessing whether he has been a victim of torture. In his view, the State party fails to acknowledge that he was tortured not only in the 1980s but also during his three-month detention in 1998. He argues that it is improbable that the Sri Lankan health-care system could provide him with the specialized treatment he needs. On this issue, although he acknowledges that his state of health may not per se constitute substantial grounds for believing that he is in danger of being subjected to torture, it does constitute a relevant fact within the meaning of article 3, paragraph 2, of the Convention in assessing the existence of such a danger.

5.5 The complainant submits that "the issue at hand is whether ... [there is] ... a substantial danger of being subjected to torture in Sri Lanka, not whether he has had a fair asylum procedure in Finland". Thus, the issue touches on the interpretation of article 3 of the Convention, not whether the Finnish asylum decision has been procedurally and materially legal.

5.6 The complainant argues that the criteria applied by the Committee in the *Elmi v. Australia*[c] case on the broadened notion of "public official or other person acting in an official capacity" applies also to the role of LTTE in the areas under its control in Sri Lanka. He refers to the exercise by LTTE of quasi-governmental powers in the north and east of the country where it has been in control, the fact that it has been accepted as a negotiating party to the peace negotiations, and that it has recently opened a political office in Jaffna, with the support of the Government of Sri Lanka. Thus, the complainant argues, his fear of torture by LTTE is material in assessing the risk of a breach of article 3.

5.7 The complainant reiterates that his past experiences of torture caused him severe mental suffering and physical injuries. He argues that due to the unsettled situation in Sri Lanka it is justified to state that he would, in addition to a substantial risk of torture, feel extremely anxious about life in Sri Lanka. He points out that according to his psychiatrist he is in need of specialized treatment and is thus mentally vulnerable to the emotional stress that life in Sri Lanka would inevitably cause him. Thus, this in itself may constitute suffering tantamount to torture.

### State party's supplementary comments

6.1 On 28 February 2003, the State party submits that the new information provided by the complainant on his activities on behalf of TELO is unreliable as it had never been mentioned by the complainant until his letter to the Committee of 4 November 2002. His explanation that he was afraid that LTTE would find out about his activities does not explain his failure to mention this incident earlier in the same way that he mentioned his activities carried out on behalf of PLOTE, which also acted against LTTE. Moreover, given that the alleged activities took place nearly 20 years ago, it would be unlikely that the complainant would be subject to retaliation by LTTE.

6.2 The State party also submits that the fact that the complainant returned to Sri Lanka without any adverse consequences after being refused asylum in Germany supports the view that he would not be personally at risk of being subjected to torture upon his return to Sri Lanka. It refers to the reports submitted by the complainant on the human rights situation in Sri Lanka and observes that the Directorate of Immigration as well as the national courts already took these reports into account when considering his application for asylum. It also observes that, at least on two occasions, the Committee found that LTTE may not be considered an authority within the meaning of article 3 of the Convention.[d]

## Issues and proceedings before the Committee

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether or not the forced return of the complainant to Sri Lanka would violate the obligation of Finland under article 3 of the Convention not to expel a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of this determination, however, is to establish whether the individuals concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.4 The Committee refers its general comment No. 1 on the implementation of article 3 in the context of article 22, paragraph 6, of which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable."

7.5 The Committee observes that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

7.6 As to the possibility of the complainant suffering torture at the hands of the State upon his return to Sri Lanka, the Committee has taken due note of the complainant's claim that he was previously detained and tortured by members of the Sri Lankan army. It further observes that the complainant provided medical reports attesting to injuries that were "possibly caused by torture", though none of the reports conclusively confirms that he was tortured during his detention in 1998. The State party does not challenge the authenticity of these reports but notes that the reports themselves attest to a gradual improvement of the author's health and that treatment for his current medical condition would be available in Sri Lanka. The State party does not concede that such torture as the complainant might have been subjected to was suffered at the hands of the Sri Lankan army - in any case, such events would have occurred years ago.

7.7 The Committee notes the relevance of the ongoing peace process, which led to the conclusion of the February 2002 ceasefire agreement between the Government and LTTE, and the negotiations between the parties to the conflict which have taken place since. It further recalls the results of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention and its conclusion that, although a disturbing number of cases of torture and ill-treatment as defined by articles 1 and 16 of the Convention are taking place, its practice is not systematic in the State party.[c] It finally notes the opinion of UNHCR of March 1999, according to which those who do not fulfil the refugee criteria, including those of Tamil origin, may be returned to Sri Lanka, and that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002. In this context, it should also be noted that the complainant has not been politically active since the mid-1980s.

7.8 The Committee recalls that, for article 3 of the Convention to apply, the individual concerned must face a foreseeable and real risk of being subjected to torture in the country to which he/she is being returned, and that this danger must be personal and present. In the light of the observations in paragraphs 7.6 and 7.7 above, the Committee does not consider that the existence of a personal and real risk has been established by the complainant.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

## Notes

[a] The petitioner has specifically requested that his name not be used in the published decision or any other public document in which this petition is reproduced. His name should thus be removed once the Committee has decided the case.

[b] The decisions were enclosed, in the Finnish language only.

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[c] Communication No. 120/1998. *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), annex VII.

[d] The State party refers to communication No. 49/1996, *S.V. et al. v. Canada*, decision of 15 May 2001, ibid., *Fifty-sixth Session, Supplement No. 44* (A/56/44), annex VII and communication No. 138/1999, *M.P.S. v. Australia*, decision of 30 April 2002, ibid., *Fifty-seventh Session, Supplement No. 44* (A/57/44), annex VII.

[e] Ibid., chap. IV, sect. B, para. 181.

## Complaint No. 198/2002

Submitted by: A.A.

Alleged victim: A.A.

State party: The Netherlands

Date of complaint: 10 October 2001 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2003,

Having concluded its consideration of complaint No. 198/2002, submitted to the Committee against Torture by Mr. A.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is A.A., a Sudanese citizen, born on 11 November 1968, currently residing in the Netherlands, where he has requested asylum. He claims that his removal to the Sudan would constitute a violation of article 3 of the Convention by the Netherlands. He is represented by counsel.

1.2 On 10 January 2002, the Committee, in accordance with rule 108 of its rules of procedure, requested the State party not to expel the complainant, pending the consideration of his case by the Committee. On 11 March 2002, the State party informed the Committee that this request would be complied with.

### The facts as submitted by the complainant

2.1 The complainant was a practising lawyer in the Sudan. He alleges that his sister, Zakia, is the widow of Bashir Mustafa Bashir, who was one of the 28 persons involved in the coup d'état in the Sudan in 1989, for which Mr. Bashir was executed. The complainant's sister later became active in an opposition organization for the relatives of martyrs. Since 1993, the complainant had been active in the banned Democratic Unionist Party (DUP) belonging to al-Tajammu' al-Watani li'adat al-Dimuqratiya (the National Democratic Alliance, a coalition of opposition parties). He has been a member of the Sudanese Bar Association since 1992.

2.2 In the summer of 1997, a pro-government party competed with DUP in elections for the Sudanese Bar Association. During preparations for the elections, DUP organized a meeting for its supporters. The complainant participated as one of the organizers and speakers. He claims that the meeting was attended by so many people that Sudanese authorities intervened and arrested several persons, among them the complainant. He alleges that he was subsequently kept in a detention centre of the State security service in Al Khartoum-Bahri for 10 days, during which he was questioned, mistreated and tortured. He was then conditionally released (travel ban).

2.3 While travelling to Port Sudan to participate in activities for the opposition party in September 1997, the complainant was arrested for the second time. He was kept in detention in Sawakin, where he was questioned and allegedly threatened with death. After three days in detention, he claims that he was thrown into the sea and was picked up after about 15 minutes. He was then brought to a prison where he was detained for a week. Upon release, he was told to stop his political activities.

2.4 On the day of the elections, a conflict erupted between the government party and the supporters of the opposition over allegations of election fraud. The complainant was once again arrested and kept in detention for three days, during which he claims to have been tortured. On 30 January 1998, he again was arrested while attending a mass demonstration that he had helped to organize. He was brought to a secret underground prison, a so-called "ghost house", where he was kept in detention for about two months. He managed to escape from the prison and fled to the Netherlands, where he arrived on 13 April 1998.

2.5 The complainant requested asylum in the Netherlands on 15 April 1998. On 12 May 1998, the migration authorities interviewed him, and the Secretary of Justice rejected his request as manifestly ill-founded on 23 May 1999. The complainant's request for residence on humanitarian grounds was also rejected.

2.6 On 14 April 2000, the Secretary of Justice rejected his request for a review of the decision. Furthermore, the complainant's appeal to the District Court of the Hague was rejected on 29 March 2001.

### The complaint

3. The complainant claims that if returned to the Sudan, he would be subjected to torture. In substantiation, he provides his history of previous detention, including his alleged subjection to torture on account of his political activity in the Sudan. He further indicates that there is a consistent pattern of human rights violations committed by Sudanese authorities, and refers in this regard to reports by human rights non-governmental organizations, and documents of the United Nations Commission on Human Rights.

### The State party's observations on the admissibility and merits

4.1 By note verbale dated 11 March 2002, the State party informed the Committee that it does not object to the admissibility of the complaint. The State party presented its observations on the merits of the complaint on 9 July 2002.

4.2 The State party contends that the complainant's return would not violate its obligations under article 3 of the Convention. It gives a detailed description of the national proceedings in the case. The admission and expulsion of aliens are regulated by the 1965 Aliens Act, the Aliens Decree, the Regulation of Aliens and the 1994 Aliens Act Implementation Guidelines.[a]

4.3 The first interview of an asylum-seeker takes place as soon as possible. It is conducted on the basis of a form on which the asylum-seeker fills in relevant data. At this stage he/she is not asked about the reasons for leaving the country of origin. This interview is followed by a second one which focuses on the reasons for leaving the country of origin. The asylum-seeker or his/her representative receives a copy of the report of the interviewing officer and has at least two days to submit corrections or additions. A decision is then made by an Immigration and Naturalization Service (INS) official on behalf of the State Secretary for Justice.

4.4 If an application for admission as a refugee or for a residence permit is denied, the asylum-seeker may lodge an objection. The decision is reviewed by a committee, which interviews the asylum-seeker. If the objection is declared unfounded, an appeal can be lodged with the District Court of The Hague, with no possible further appeal, as provided under the 1965 Aliens Act.[b]

4.5 The State party affirms that the Minister for Foreign Affairs periodically issues country reports[c] on the human rights situation in the Sudan. According to the report of September 1998 on the Sudan, after the coup led by General Omar Hassan al-Bashir on 30 June 1989, all political parties were banned, their leaders left the country or continued their political activities in hiding. The National Islamic Front (NIF) remained the only influential political force. Since 1993, Omar Hassan al-Bashir has been the President of the Sudan. NIF has a large majority in parliament. The report noted that arbitrary arrests and detention without charge were current. Supporters of banned political parties, trade union officials, lawyers and human rights activists were among the victims. Members of these groups had been known to "disappear", ending up in the security services' "ghost houses" or being harassed in other ways by the security services.

4.6 The State party argues that according to the above report, political prisoners were mainly detained in the Khartoum North Central Prison (Kober prison). By European standards, the living conditions in that prison were poor, but the prohibition of torture was respected. The military and security services had their own detention centres where torture and detention without charge were frequent. "Ghost houses" were unofficial detention centres not subjected to any form of oversight. Detention generally lasted from a few days to three weeks. The purpose was to intimidate suspected political adversaries; detainees were subjected to mental and physical abuse and torture. The armed attacks in eastern Sudan led to increased use of these centres in the first half of 1997, but once the Government established greater control over the situation later in 1997, their use declined. The Minister concluded that since 1997, some positive changes in the Sudan were discernible. The situation was not such as to imply that it would be irresponsible to return a Sudanese national whose application for admission as a refugee or for a residence permit on humanitarian grounds had been refused after careful consideration.

4.7 By letter of 20 November 1998, the State Secretary for Justice notified the House of Representatives of his decision that Northern Sudanese asylum-seekers would no longer be eligible for provisional residence permits.[d] On 2 June 1999, the Legal Uniformity Division concluded that, on the basis of the information available, the decision of the State Secretary for Justice was justified.

4.8 The country report of 1999 stated that the human rights situation in the Sudan had improved slightly but remained a cause of concern. In particular, the situation in the conflict areas was troubling. Arbitrary arrest and detention had become less common, but were still possible under the National Security Act and the Criminal Code (no date specified).

4.9 On 21 July 2000, the Minister for Foreign Affairs released a supplementary report on the policy of a number of Western countries on the return of Sudanese whose applications for asylum were unsuccessful. The country reports of 1999 and 2000 led the State Secretary for Justice to alter his policy on categorical protection. In particular, members of the non-Arabic South Sudanese groups or Nuba groups who, before leaving the country, had resided undisturbed in Northern Sudan were no longer eligible for provisional residence permits.

4.10 The State party's latest country report of March 2001 notes that the human rights situation had improved slightly but remained a cause of concern, especially in conflict areas. President al-Bashir replaced the Tawali Act of January 1999 by a new Act on Political Parties, permitting political parties of 100 members or more to conduct political activities. The report states that political parties can carry out political activities without adverse consequences to a reasonable extent. There is no complete freedom, however. Political leaders, for instance, have on several occasions been summoned for questioning by security services and one arrest has been reported. There were, however, no cases of detention lasting longer than a day or of serious abuse, as there were before. Parties such as the Umma Party and DUP enjoyed more freedom than before. Members of the northern opposition returned to the Sudan in response to the "Motherland Call" and an amnesty for political refugees living in exile, announced by President al-Bashir on several occasions, was put in writing on 3 June 2000. Accordingly, the State party's policy in relation to residence requests from Sudanese asylum-seekers remained intact.

4.11 In relation to the complainant's personal situation, the State party recalls that he claims to have begun work as a lawyer in Khartoum in March 1992 and was a member of the trade union for Sudanese lawyers ("the lawyers' union"). In 1993, he became a member of DUP. The lawyers' union had two factions: one supporting the regime in power and one supporting DUP. The complainant carried out activities for DUP within the lawyers' union, mainly by coordinating and organizing meetings with the aim of overthrowing the regime. According to the complainant, his troubles started in July 1997, during the preparation for the November 1997 elections for the members of the board of the lawyers' union. He states that the authorities had harboured ill-will towards him and his family even before then, because of the activities of his brother-in-law.

4.12 The State party notes that the complainant was arrested four times. The first was in July 1997, during a meeting in the offices of the lawyers' union in relation to the elections. In September 1997, when he wanted to attend a party meeting in Port Sudan and went to obtain a travel permit from the security services, he was informed that after his arrest in 1997 he was no longer allowed to travel. He departed nevertheless, but was arrested in Sawakin. After three days in detention, he was thrown into the ocean by members of the security services. He claims that this was done to scare him. He was picked up by a trawler, accused of arms trafficking and of leaving the Sudan illegally and turned over to the security services again. He was detained for seven days, after which he was released. The third arrest was in November 1997, when he was monitoring the lawyers' union elections. The fourth arrest took place on 30 January 1998, during a demonstration. The complainant alleged that he was taken to a "ghost house", where he was kept in a solitary cell measuring 0.5 by 3 metres and was interrogated twice, and subjected to psychological torture. On 20 March 1998, he was interrogated by a former classmate from secondary school. The former classmate decided to help the complainant and told him how to escape. On 25 March 1998, he left the Sudan by ship from Port Sudan.

4.13 The State party recalls that the complainant applied for asylum and for a residence permit on 15 April 1998. On 12 May 1998, he was interviewed by an IND official, with the help of an Arabic interpreter, regarding the reasons for seeking asylum. By a decision of 23 May 1999, his application was rejected as manifestly ill-founded; his application for a residence permit was also rejected. On 17 June he lodged an objection against the decision of 23 May 1999, and on 10 February 2000 he was interviewed by a committee regarding his objection. The objection was declared unfounded on 14 April 2000. The complainant lodged an appeal against that decision on 9 May 2000. By judgement of 29 March 2001, the District Court of The Hague declared the appeal unfounded.

4.14 The State party considers that the existence of a consistent pattern of gross violations of human rights in a country does not as such constitute sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist to the effect that the individual concerned would be personally at risk.[e] The State party recalls that "substantial grounds" require more than a mere possibility of torture but need not be highly likely in order to satisfy that provision's conditions.[f]

4.15 The State party invokes the Committee's general comment No. 1 on the implementation of article 3 in the context of article 22, in particular paragraphs 6 and 7,[g] and the Committee's Views in communication No. 142/1999, *S.S. and S.A. v. the Netherlands*.[h]

4.16 The State party, in relation to the complainant's personal risk in the event of his return to the Sudan, notes that the current human rights situation in the Sudan, though a cause of concern, does not provide substantial grounds for believing that all Sudanese are in general in danger of being subjected to torture. The State party refers to the country reports of the Minister for Foreign Affairs and to the Committee's jurisprudence.

4.17 For the State party, the fact that the complainant was a lawyer and a member of DUP does not in itself constitute sufficient grounds for assuming that if he were returned to the Sudan, he would be in danger of being subjected to treatment contrary to article 3 of the Convention. The State party invokes the country reports of the Minister for Foreign Affairs referred to above. Though complete freedom for activists of political parties has yet to arrive, there are no longer any cases of detention lasting longer than a day, or other serious abuse. Furthermore, in response to the "Motherland Call" and the proclamation of an amnesty, important members of the northern opposition have returned to the Sudan.

4.18 In the State party's opinion, it cannot be concluded that the complainant would run a foreseeable, real and personal risk of being tortured if returned to his country of origin. There remained some doubt as to the credibility of the complainant's allegations that the authorities harbour ill-will towards him and his family because his brother-in-law participated in a coup attempt on 23 September 1989. The State party argues that it is not aware of a coup attempt on that date; all its reports stated that a coup took place on 30 June 1989, under the leadership of Lieutenant-General al-Bashir, since then the President of the Sudan. The State party argues that the complainant has failed to substantiate his claim that his problems with the authorities in 1989 arose as a result of the activities of his brother-in-law, and were such that he must fear treatment in violation of the Convention.

4.19 The State party dismisses as implausible the complainant's allegation that he was detained from 30 January 1998 to 23 March 1998. His statements allegedly were contradictory, vague and imprecise. In particular, he gave contradictory accounts of the number of people present at his interrogations.

4.20 The complainant was unable, according to the State party, to provide details about the prison in which he was held and, despite having been detained for over two months, could not describe his cell in any detail. The State party dismisses as implausible his statement that obstacles in the cell made it impossible for him to walk. It is unimaginable, in the State party's opinion, that during a detention of almost two months, he would not have investigated his surroundings. He should have been able to describe his cell in more detail, at least because he alleges that food was thrown into his cell daily.

4.21 The State party voices doubts about the ease with which the complainant claims to have been able to leave his prison. It contends that it stretches the imagination that major Sudanese opponents of the regime would be detained in a prison with unlocked doors. The State party also considers it curious that the complainant was able to leave undetected in a car that was waiting for him only 100 metres from the prison. Finally, the State party considers implausible the complainant's account of his detention.

4.22 The State party concludes that, in its opinion, the inconsistencies in the complainant's presentation of the facts are material and raise doubts about the veracity of his claims; these inconsistencies are related to essential aspects of the reasons given by him for leaving the Sudan. The State party believes that there were sufficient grounds for regarding it as implausible that the Sudanese authorities harbour ill-will towards him and that, as a result, he would, on returning to the Sudan, be in danger of torture, or that the grounds for this belief are substantial in a way that such danger would be personal and present.

4.23 The State party contends that even if credence were given to the complainant's statements regarding his problems in connection with his activities for DUP within the lawyers' union, this does not justify the conclusion that he would be subjected to treatment contrary to article 3 of the Convention if he were now to return to the Sudan. The State party notes that it does not find it plausible that the Sudanese authorities were fully aware of the complainant's individual political activities given that they were carried out under cover of the lawyers' union. The State party notes also that according to the complainant's own statements, he was never personally arrested or ill-treated (in his own home town, for instance) by the authorities. His arrests took place once in the context of an intervention by the police during a large-scale disruption of public order and once because he had violated a travel ban.

4.24 The State party further concludes that given the general situation in the Sudan and the personal circumstances of the complainant, there is no reason to conclude that substantial grounds exist for believing that the complainant would run a foreseeable, real and personal risk of being subjected to torture upon his return to the Sudan.

### The complainant's comments

5.1 In his comments on the State party's observations of 22 December 2002, the complainant notes the State party's expression of "some" doubts about the credibility of his statements, and argues that "some" doubts is insufficient to contest the overall credibility of his statements. He challenges the State party's doubts about the credibility of his statements relating to his detention from 30 January 1998 to 23 March 1998. He notes that the State party does not contest his involvement in the demonstration on 30 January 1998, and declares that the contradictions pointed out by the State party are minor ones. He dismisses the State party's observations as speculative because it did not take into consideration that he was detained in a "ghost house", which is not a normal detention facility, and information on "ghost houses" is not readily available. He objects to the State party's failure to take into consideration the circumstances under which he was detained and the fact that he was at that time already a victim of previous acts of torture.

5.2 According to the complainant, the State party has not previously expressed explicit doubts about the credibility of his statements concerning his first, second and third arrests. The complainant views his statements as detailed, consistent and without contradictions.

5.3 The complainant contests the State party's conclusion in paragraph 4.24 above. He recalls that, first, since the lawyers' union elections were highly political, it is not implausible that the authorities were aware of his political involvement. He reiterates that he was questioned about his activities and that he was asked to stop them.

5.4 The complainant further argues that the facts do not support the State party's observation that he was not "singled out". The first time he was arrested, questioned and tortured, he was one of the organizers of and speakers at the meeting in the lawyers' union offices. The second time he was arrested, detained and tortured, and told to stop his political activities, after he violated a travel ban. The third time, he was among those who had detected an electoral fraud scheme.

5.5 The complainant considers also that the State party should, but did not, take into consideration that every time he was detained, he was tortured.

5.6 Finally, the complainant states that the State party should, but did not, take into account that lawyers in his position remain a group at risk in the Sudan.[i]

## Issues before the Committee

6. Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been or is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication, and that it has requested the Committee to proceed to an examination of the merits. The Committee concludes that no obstacles to the admissibility of the complaint exist and proceeds with the consideration of its merits.

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether or not the forced return of the complainant to the Sudan would violate the State party's obligation, under article 3 of the Convention, not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 The Committee recalls that in reaching its decision, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.4 In the instant case, the Committee notes the inconsistencies in the complainant's account, as pointed out by the State party, as well as the general failure by the complainant to substantiate his allegations that he was subjected to torture.

7.5 The Committee further notes the State party's remarks that the complainant failed to give any information on the conditions of detention in a so-called "ghost house", and that he failed to describe the cell in which he alleges to have been detained for several weeks. The complainant has not responded to these arguments other than by noting that it is insufficient for the State party to manifest "some doubts" about the credibility of his statements. The Committee also notes that the complainant failed to respond to the doubts voiced by the State party concerning the ease with which he claims to have been able to leave the prison.

7.6 The Committee finally notes the State party's observations on the evolution of the political system in the Sudan over the last few years, in particular the legalization of the political parties, the presidential amnesty of political refugees of 3 June 2000 and the "Motherland Call" under which important members of the opposition have returned to the Sudan. The Committee notes that the complainant has not challenged any of these arguments in his comments.

7.7 On the basis of the above, the Committee considers that the information made available by the complainant does not show that substantial grounds exist for believing that he would be personally in danger of being subjected to torture in the event of his return to the Sudan.

8. The Committee against Torture, acting under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to the Sudan by the State party would not constitute a violation to article 3 of the Convention by the Netherlands.

## Notes

[a] The State party informs the Committee that although a new Aliens Act entered into force, on 1 April 2001, that has no consequences of substance for the petitioner's situation.

[b] The State party declares, however that a Legal Uniformity Division exists within the District Court of The Hague, in order to promote consistency in the application of the law in asylum cases and other proceedings involving aliens.

[c] The reports on the situation in countries of origin are issued on the basis of information from non-governmental organizations and reports received by the Netherlands diplomatic missions.

[d] The State party explains that this type of policy is known in the Netherlands as categorical protection (*categoriale bescherming*).

[e] The State party recalls the Committee's Views in communications No. 91/1997, *A. v. The Netherlands, Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), annex VII, sect. A, and No. 94/1997, *K.N. v. Switzerland*, ibid., *Fifty-third Session, Supplement No. 44* (A/53/44) annex X, sect. A.

[f] The State party refers to the Committee's Views in communication No. 28/1995, *E.A. v. Switzerland*, ibid.

[g] "6. Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable.

"7. The petitioner must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. All pertinent information may be introduced by either party to bear on this matter."

[h] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44* (A/56/44), annex VII, sect. A.

[i] The petitioner gives as example an NGO appeal and a report of the Special Representative of the Secretary-General on human rights defenders of 27 February 2002 (E/CN.4/2002/106).

## Complaint No. 201/2002

| | |
|---|---|
| Submitted by: | M.V. (represented by counsel) |
| Alleged victim: | M.V. |
| State party: | The Netherlands |
| Date of complaint: | 31 January 2002 |

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 2 May 2003,

Having concluded its consideration of complaint No. 201/2002, submitted to the Committee against Torture by Mr. M.V. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. M.V., a Turkish national of Kurdish ethnic origin, born on 1 January 1963, currently present in the Netherlands and awaiting deportation to Turkey. He claims that his forcible return to Turkey would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 31 January 2002, the Committee forwarded the complaint to the State party for comments and requested, under rule 108 of the Committee's rules of procedure, not to expel the complainant to Turkey while his complaint was under consideration by the Committee. The State party acceded to this request.

### The facts as submitted by the complainant

2.1 The complainant states that he and his wife are related to Kurdish Workers Party (PKK) leader Abdullah Öçalan, who also comes from his home town, Ömerli, in the Kurdish part of Turkey. The complainant's grandfather is a nephew of Abdullah Öçalan's mother. The grandmother of the complainant's wife is a sister of Abdullah Öçalan's father. He contends that he belongs to a politically active family and that he himself is politically active.

2.2 In 1997, the complainant joined the pro-Kurdish People's Democracy Party (HADEP). He also collected information for the Human Rights Association (IHD) about alleged human rights abuses by Turkish authorities. He alleges that he was arrested several times and ill-treated in connection with these activities, and that the Turkish authorities sought information from him concerning PKK, HADEP and IHD. In May 1998 (after also being approached in 1993 and 1995), he was allegedly threatened with death if he did not provide this information. His family was also threatened with harm if he fled. Thereafter, he left his home village, departed Turkey by truck on 11 June 1998 and arrived in the Netherlands on 17 June 1998, where he alleges he continued his political activities.[a]

2.3 On 18 June 1998, the complainant requested asylum and residence. After an interview had taken place in the presence of an interpreter, the State Secretary of Justice decided, on 8 February 2000, that his request for asylum was manifestly unfounded and, further, denied his request for residence on humanitarian grounds.

2.4 On 7 March 2000, the complainant lodged an objection to this decision, supplying his grounds of objection on 24 March 2000. On 6 July 2000, he requested an injunction to prevent his expulsion. On 24 July 2001, the District Court of The Hague rejected the request for an injunction and declared the objection ill-founded. The Court found, inter alia, that there was no indication that article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (which has been interpreted to proscribe extradition to a country where an individual would face torture) would be violated in the complainant's case, as the complainant had not shown that he in fact belonged to any categories of persons (such as PKK activists) who might be exposed to a higher risk of harassment or intimidation or worse on the part of the Turkish authorities.

**The complaint**

3.1 The complainant contends that there are substantial grounds to believe his removal to Turkey would result in torture or other forms of ill-treatment and would therefore violate article 3 of the Convention in light of the following factors: his political and human rights activities in Turkey, his alleged arrests and ill-treatment, his political activities in the Netherlands, his family relationship to Abdullah Öçalan, and the problems of his family.[b]

3.2 The complainant refers to a variety of reports in support of his proposition that conditions in Turkey reveal a consistent pattern of gross, flagrant or mass violations of human rights. These emanate from human rights organizations,[c] newspapers[d] and a human rights commission of the Turkish Parliament.[e]

3.3 The complainant states that the same matter has not been submitted for examination under another procedure of international investigation or settlement.

**The State party's observations on admissibility and merits**

4.1 By letter of 29 March 2002, the State party advised that it had no objection to the admissibility of the communication. By letter of 31 July 2002, it disputed the merits of the communication, arguing that in the light of the national procedure followed, the Turkish human rights situation, the complainant's personal circumstances and the compatibility of the proposed expulsion with article 3 of the Convention, there are no grounds to fear that the author would be subjected to torture.

4.2 The State party recalls the procedure applied to the complainant. Aliens are admitted if they satisfy the requirements of the 1951 Convention relating to the Status of Refugees, if article 3 of the European Convention of Human Rights so mandates, or if compelling humanitarian circumstances so require. Asylum-seekers are promptly notified of their right to legal and other assistance. A first interview takes place as soon as possible after arrival, and does not concern the grounds for departure. A second interview (with legal advice and interpretation available) focuses on these reasons. The applicant (and counsel) may correct, or add to, the record of this interview. The decision on the application considers regular official country reports compiled by the Ministry for Foreign Affairs, which also draw on reports of non-governmental organizations.

4.3 A notice of objection may be lodged against a negative decision, upon which a decision is made as to whether the applicant may remain in the State party pending the outcome of the objection proceedings. If denied permission to remain, an injunction may be sought from the District Court. The Court may simultaneously decide on the notice of objection and the injunction. Applicants arguing that expulsion would remove them to a country where a well-founded fear of persecution on the basis of political or religious beliefs, their nationality, or membership of a particular race or social group exists may not be removed without special instructions from the Minister of Justice.

4.4 On the current situation in Turkey, the State party notes that this situation and the Kurdish position in particular are constantly monitored by the Government and play a role in the decisions of the State Secretary of Justice in individual cases. It points out that after the reported death in April 1999 of an asylum-seeker deported to Turkey, the State Secretary of Justice directed that all deportations of Kurds to Turkey be suspended pending investigation. In December 1999, following an official investigation by the Ministry for Foreign Affairs, the State Secretary decided to resume these deportations. This decision was upheld in March 2000 by the District Court of The Hague.

4.5 The State party reviews recent country reports: on 3 September 1997, the Minister found that Kurds are not as such subject to persecution within the meaning of the Refugee Convention. They are also free to move internally in the event of difficulties, unless suspected of active espousal of the Kurdish cause. On 17 September 1999, the Minister found noticeable improvements, particularly in the light of focused international attention, with the main human rights issues in Kurdish areas being restrictions on freedoms of expression, association and assembly. The ability to seek better personal and economic circumstances elsewhere in Turkey remained open if necessary. On 13 December 2000, the Minister found certain positive trends, with Kurds substantially less at risk of involvement in military conflict and growing confidence in return and reconstruction. Pressures on the pro-Kurdish party HADEP had diminished and political dialogue was opening. On 4 May 2001, the Minister again refers to the freedoms of expression, association and assembly, while noting that Kurds are not persecuted merely by virtue of their ethnicity. From the most recent report (29 January 2002), it can be inferred that there have been no major changes.

4.6 As to the compatibility of the complainant's projected return with article 3, the State party refers to the Committee's jurisprudence that the complainant must show a foreseeable, real and personal risk of torture beyond a mere possibility, and that specific grounds beyond the existence of a consistent pattern of gross violations must exist. Applying these principles to the complainant's case, the State party argues, in the light of the Committee's recent jurisprudence[f] and the above-mentioned country reports, that the general situation in Turkey is not such as to automatically place any Kurd at risk.

4.7 Concerning the complainant's family ties and alleged political activities, the State party argues that no plausible case has been made that the complainant faces torture in Turkey on these grounds. In the most recent country report, the Minister points out that there are countless Turkish citizens with PKK family members without this relationship causing any significant problems. While relatives of prominent PKK members may be subject to extra scrutiny from the authorities and probably live under a certain amount of pressure, they cannot be said to have been persecuted on account of their family ties with PKK leaders.

4.8 The State party adds that the complainant divorced his wife on 3 January 2002, so that those family ties no longer exist.

4.9 Concerning the complainant's allegation that he was arrested three times on account of HADEP membership, the State party points out that he was unconditionally released and free to continue his activities on each occasion, suggesting that the authorities do not have serious objections to the complainant. Indeed, the complainant himself states that he did not flee for these reasons, and thus no plausible case can be made for any risk of torture on this basis.

4.10 Moreover, in terms of the complainant's fear of adverse consequences based on his refusal to supply the authorities with information, the State party points out that after he refused such requests five times between 1993 and 1998, at no point did he suffer consequences. After he left his village, his brothers were interrogated about his whereabouts, but were released unconditionally thereafter. No evidence has been presented of any problems concerning other relatives after his departure.

4.11 The State party concludes that no plausible, much less substantial, case has been made for the contention that the complainant would personally be subjected to treatment incompatible with article 3 of the Convention. Accordingly, his removal should be permitted to proceed.

### Complainant's comments on the State party's submissions

5.1 By letter of 14 October 2002, the complainant responded, arguing that the State party did not contest the complainant's credibility. As to his divorce, he states that it is not just his wife, but also he himself, who is related to Abdullah Öçalan. In any event, the "guilt by association" deriving from a nine-year marriage did not disappear with divorce. He points out that he is not one of the countless Turkish citizens who have one or more PKK members in their family, but is related personally and through his ex-wife to the movement's leader himself. Second, the country report of 29 January 2002 states that relatives of PKK members can count on increased interest from the authorities, an interest that is in proportion to the degree of relationship or the position in PKK of the suspected family member (unless the authorities consider that there are in fact no links).

5.2 Responding to the State party's comment that he was released unconditionally after each arrest, the complainant states that the fact of his rearrest showed that he could not continue his activities without problem. These arrests and ill-treatment showed that the authorities did have "serious objections" to him, even though he did not flee at the time. The complainant argues that the State party has not considered available information on the allegedly deteriorating position of HADEP and IHD members.

5.3 As to the State party's contention that previous threats to the complainant had not resulted in harm to him, the complainant states that he took the last threat before his flight seriously, as another IHD activist had been killed and the military was positioned close to his house. In any event, death threats from the authorities are in themselves serious, and the human rights situation in Turkey does not suggest the contrary. Rather, such threats should be seen as a policy of intimidation which can be qualified as "a psychological form of forbidden ill-treatment".

5.4 Concerning the release of his brothers after his escape, the complainant contends that the very fact of their arrest shows that he is not a person in whom the authorities have no interest. In any event, their release does not conclusively show that there is no risk for the complainant in the event of his return.

5.5 As to a reference in the 29 January 2002 country report that relatives of HADEP members are not pursued on the basis of political orientation, the complainant refers to the earlier, 13 December 2000 country report to the effect that, in the case of PKK activists and sympathizers, there are reliable indications that mistreatment and/or torture occurs not infrequently upon return. Returnees have their prior criminal history checked by the authorities upon return to the receiving country, and the complainant argues that the authorities' previous interest in him would have them further investigate him upon his return.

**Issues and proceedings before the Committee**

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that the State party concedes that domestic remedies have been exhausted.

6.2 To the extent that the complainant suggests that such ill-treatment as he might face in Turkey falls within article 3 of the Convention (see paragraphs 3.1 and 5.3), the Committee notes that the scope of article 3 extends only to torture and does not encompass treatment that falls short of that serious threshold. Those parts of the complaint, therefore, are inadmissible *ratione materiae* as falling outside the scope of article 3. With respect to the complainant's claim under article 3 of the Convention concerning as such, the Committee does not identify further obstacles to the admissibility of the complaint, and accordingly proceeds with the consideration of the merits.

7.1 The issue before the Committee is whether removal of the complainant to Turkey would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Turkey. In assessing such risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 In the present case, the Committee observes that, based on the information before it, the political activity that the complainant engaged in was confined to (unspecified) involvement with the political party HADEP and the IHD organization, including the collection of information, and the complainant himself stated that he did not flee for these reasons. There is no suggestion that he was active in or involved with PKK. Nor has the complainant detailed in any manner his political activities in the Netherlands, and how that might strengthen his claim under article 3. Given some measure of documented progress in the human rights situation in Turkey since the complainant's departure in 1998, and the well-known development of the apprehension by Turkish authorities of the PKK leadership, the Committee considers that the complainant has failed to establish that either his past sporadic contact with the authorities, which did not include any allegation of torture, or his family ties of some distance with the PKK leadership are such that there are substantial grounds for believing that any interest the authorities would take in him at the present time would amount to torture.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Turkey and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

**Notes**

[a] No further details are supplied as to these activities.

[b] No further details are supplied on these problems.

[c] Amnesty International, "Endemic torture must end immediately" (8 November 2001); "Annual report on Turkey" (1999, 2000 and 2001); Human Rights Watch, "World report" (2000 and 2001); Human Rights Association of Turkey, "Human rights violations in Turkey" (21 November 2001); Pro Asyl, "*Von Deutschland in den türkischen Folterkeller: Zur Rückkehrgefährdung von Kurdinnen und Kurden*" (June 2000); Schweizerische Flüchtlingshilfe, "*Türkei: Zur aktuellen Situation in Mai 2001*" (June 2001).

[d] *De Volkskrant*, "*Opstelster Turks rapport over martelen aangeklaagd*" (26 July 2001); *NRC Handelsblad*, "*Auteur van Turks Martelboek vertelt: 'Van gevangenen 90 procent gemarteld'*" (21 November 2001).

[e] This report is not supplied. According to the complainant, it found evidence that torture was being practised during visits to places of detention in 1998 and 2000, with a former chairwoman of the commission contending that 90 per cent of prisoners are subjected to ill-treatment.

[f] *S.L. v. Sweden*, communication No. 150/1999, Views adopted on 11 May 2001, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 44* (A/57/44), annex VII, sect. A; *M.B.B. v. Sweden*, communication No. 104/1998, Views adopted on 21 June 1999, ibid., *Fifty-fourth Session, Supplement No. 44* (A/54/44), annex VII, sect. A; *S.M.R. v. Sweden*, communication No. 103/1998, Views adopted on 11 June 1999, ibid.

## Complaint No. 219/2002

Submitted by: Ms. G.K. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 18 October 2002 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 7 May 2003,

Having concluded its consideration of complaint No. 219/2002, submitted to the Committee against Torture by Ms. G.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is G.K., a German national, born on 12 January 1956, at the time of the submission of the complaint held at the police detention centre at Flums (Switzerland), awaiting extradition to Spain. She claims that her extradition to Spain would constitute a violation by Switzerland of articles 3 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

1.2 On 22 October 2002, the Committee forwarded the complaint to the State party for comments and requested, under rule 108, paragraph 1, of the Committee's rules of procedure, not to extradite the complainant to Spain while her complaint was under consideration by the Committee. The Committee indicated, however, that this request could be reviewed in the light of new arguments presented by the State party or on the basis of guarantees and assurances from the Spanish authorities. The State party acceded to this request.

1.3 By note verbale of 8 November 2002, the State party submitted its observations on the admissibility and merits of the complaint; it also asked the Committee to withdraw its request for interim measures pursuant to rule 108, paragraph 7, of the Committee's rules of procedure. In his comments, dated 9 December 2002, counsel asked the Committee to maintain its request for interim measures, pending a final decision on the complaint. On 6 January 2003, the Committee, through its Special Rapporteur, decided to withdraw its request for interim measures.

### The facts as presented by the complainant

2.1 In 1993, the complainant worked as a language teacher in Barcelona, Spain, where she became involved with one Benjamin Ramos Vega, a Spanish national. During that time, the complainant and Mr. Ramos Vega both rented apartments in Barcelona, one at Padilla Street, rented on 21 April 1993 in Mr. Ramos Vega's name, and one at Aragón Street, rented on 11 August 1993 in the complainant's name for the period of one year. According to counsel, the complainant had returned to Germany by October 1993.

2.2 On 28 April 1994, Felipe San Epifanio, a convicted member of the "Barcelona" commando of the Basque terrorist organization Euskadi Ta Askatasuna (Basque Fatherland and Liberty) (ETA), was arrested by Spanish police in Barcelona. The judgement of the Audiencia Nacional, dated 24 September 1997, sentencing him and other ETA members to prison terms states that, upon his arrest, Mr. San Epifanio was thrown to the floor by several policemen after he had drawn a gun, thereby causing him minor injuries which reportedly healed within two weeks. Based on his testimony, the police searched the apartment at Padilla Street[a] on 28 April 1994, confiscating firearms and explosives stored there by the commando. Subsequent to this search, Mr. Ramos Vega left Spain for Germany.

2.3 The Juzgado Central de Instrucción No. 4 de Madrid issued an arrest warrant, dated 23 May 1994, against both Mr. Ramos Vega and the complainant on suspicion of collaboration with ETA as well as possession of firearms and explosives. A writ was issued on 6 February 1995 by the same examining judge indicting the complainant and Mr. Ramos Vega for having rented, "under their name, the apartments at Padilla and Aragon streets, respectively, places which served as a refuge and for the hiding of arms and explosives, which the members of the commando had at their disposal for carrying out their actions".[b]

2.4 On 10 March 1995, the Berlin public prosecutor's office initiated criminal proceedings against the complainant, following a request by the Spanish Ministry of Justice. However, the German authorities decided to discontinue proceedings on 23 November 1998, in the absence of a reasonable suspicion of an offence punishable under German law. In a letter to the Spanish authorities, the Berlin public prosecutor's office stated that the apartment at Padilla Street, where the firearms and explosives had been found, had not been rented by the complainant but by Mr. Ramos Vega, while only a bottle filled with lead sulphide powder - which is not used for the production of explosives - had been found in the complainant's apartment at Aragón Street.

2.5 Subsequent to Mr. Ramos Vega's extradition to Spain in 1996, the Audiencia Nacional, by judgement of 24 September 1997, convicted him of collaboration with an armed group and falsification of licence plates, the offence being aggravated owing to their connection with terrorist activities ("con agravante de relación con actividades terroristas"), sentencing him to two terms of imprisonment, one of seven years and the second of four years and three months. However, the Audiencia Nacional acquitted him of the charges in relation to the storage of firearms and to the possession of explosives, owing to lack of proof that he had known about the existence of these materials, and noting that he had rented the apartment at Padilla Street at the request and for the use of a friend, Dolores López Resin ("Lola"). The judgement states that, immediately following the search of that apartment, Mr. Ramos Vega helped several members of the "Barcelona" commando to flee by renting, and changing the licence plates of a car which he, together with the commando members, used to leave Barcelona.

2.6 The complainant was arrested by Swiss police when crossing the Austrian-Swiss border at St. Margrethen on 14 March 2002, on the basis of a Spanish search warrant dated 3 June 1994. She was provisionally detained, pending a final decision on her extradition to

Spain. During a hearing on 20 March 2002, she refused to consent to a simplified extradition procedure. By diplomatic note of 22 April 2002, the Government of Spain submitted an extradition request to the State party, based on an international arrest warrant dated 1 April 2002, issued by the Juzgado Central de Instrucción No. 4 at the Audiencia Nacional. This warrant is based on the same charges as the original arrest warrant and the writ of indictment against both the complainant and Mr. Ramos Vega.

2.7 By letter of 7 June 2002, the complainant, through counsel, asked the Federal Office of Justice to reject the extradition request of the Government of Spain, claiming that by referring the criminal proceedings to the German authorities, Spain had lost the competence to prosecute the complainant, thus precluding the complainant's extradition to that country.[c] Moreover, the fact that the Spanish authorities, in their extradition request to the State party, had deliberately not revealed who actually rented the apartment at Padilla Street, indicated that the complainant was to be tried for political rather than juridical reasons. Since political offences were not extraditable,[d] counsel argued that, contrary to the general rule that decisions on extraditions were purely a formal matter, the State party was obliged to examine whether a reasonable suspicion of an offence existed with respect to the complainant, in the absence of any link with the firearms and explosives found in the Padilla Street apartment, or with the escape vehicle. In counsel's opinion, the complainant's extradition is also precluded by the fact that the Spanish arrest warrant was based on testimony which had allegedly been extracted from Mr. San Epifanio by torture.

2.8 By decision of 8 August 2002, the Federal Office of Justice granted the Spanish extradition request, subject to the condition that the complainant would not be tried for having committed the alleged offences for political motives and that the severity of the punishment would not to be increased on the basis of such motive. This decision was based on the following considerations: (a) that the examination of the issue of reciprocal criminal liability was based on the facts set out in the extradition request, the evaluation of facts and evidence and matters of innocence or guilt being reserved for the Spanish courts; (b) that no issue of *ne bis in idem* arose since the German authorities, for lack of territorial competence, had not exhaustively dealt with these questions; (c) that the charges brought against the complainant were not of a purely political nature; (d) that the complainant was not at direct and personal risk of being tortured during incommunicado detention following her extradition to Spain, because she could already engage the services of a lawyer in Spain prior to her extradition and because she enjoyed consular protection by Germany; and (e) that even if Mr. San Epifanio's testimony had been extracted by torture, this was not the only evidence on which the charges against the complainant had been based.

2.9 On 8 September 2002, counsel lodged an administrative court action with the Federal Tribunal against the decision of the Federal Office of Justice to extradite the complainant. In addition to the reasons stated in his motion of 7 June 2002, he asserted that the Spanish extradition request lacked the necessary precision required by article 14, paragraph 2, of the European Convention on Mutual Legal Assistance in Criminal Matters (1959)[e] since it was essentially based on the arrest warrant of 1994 and failed to take into account the results of the subsequent criminal proceedings in Germany as well as in Spain. In particular, it did not clarify that the apartment at Padilla Street was rented by Mr. Ramos Vega exclusively, that the latter had been acquitted of the charges relating to the storage of firearms and possession of explosives by the Audiencia Nacional, and that the powder found in the apartment at Aragón Street was lead sulphide which could not be used for the production of explosives. The facts established in the extradition request were, therefore, to be disregarded; the request itself was abusive and had to be rejected. With respect to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, counsel submitted that, although in theory the complainant enjoyed consular protection by Germany and could already engage the services of a lawyer of her choice in Spain prior to her extradition, these rights could in practice only be exercised after incommunicado detention had ended. Regarding article 15 of the Convention, counsel alleged that the Spanish extradition request failed to indicate on which additional evidence the charges against the complainant had been based. Insofar as the evidence was found indirectly through Mr. San Epifanio's testimony, counsel claims that the theory of the "tainted fruits of the poisonous tree" precludes the use of such evidence by the Swiss courts.

2.10 By letter of 20 September 2002, the Federal Office of Justice asked the Federal Tribunal to dismiss the complainant's legal action. Counsel responded to this motion by letter, dated 15 October 2002, in which he maintained and further explained his arguments.

2.11 The Swiss Section of Amnesty International sent an *amicus curiae* brief, dated 2 October 2002, to the Federal Tribunal on behalf of the complainant, stating that Spanish legislation provided for the possibility of keeping persons suspected of terrorist offences in incommunicado detention for a period of up to five days during which they could only be visited by a legal aid lawyer, and that such detention increased the risk of torture and maltreatment. Although torture was not systematically inflicted by the National Police or the Civil Guard numerous instances of maltreatment of ETA suspects still occurred, including sexual assaults, including rape, blows to the head, putting plastic bags over the head ("*la bolsa*"), deprivation of sleep, electric shocks, threats of execution, etc. Amnesty International considered it indispensable for the State party to make the complainant's extradition to Spain subject to the following assurances: (a) that under no circumstances should the complainant be handed over to the Civil Guard or the National Police, but that she be placed directly under the authority of the Audiencia Nacional in Madrid; (b) that the complainant be granted direct and unlimited access to a lawyer of her choice; and (c) that she be brought before a judge as soon as possible following her extradition to Spain.

2.12 By judgement of 21 October 2002, the Federal Tribunal dismissed the complainant's action, upholding the decision of the Federal Office of Justice to grant the Spanish extradition request. The Tribunal based itself on the facts set out in the extradition request and concluded that the complainant was punishable under Swiss law (either as a participant in or as a supporter of a terrorist organization pursuing the objective to commit politically motivated crimes of violence) as well as under Spanish law. The Tribunal did not pronounce itself on the complainant's challenges as to the facts contained in the extradition request, ruling that questions of facts and evidence were for the Spanish courts to decide. Moreover, since ETA was not merely a group struggling for political power by employing legitimate means, the Tribunal did not consider the complainant's participation in or her support of ETA a political offence within the meaning of article 3 of the European Convention on Extradition. The fact that criminal proceedings against the complainant had been closed by the Berlin public prosecutor's office for lack of a reasonable suspicion of an offence did not, in the Tribunal's opinion, bar the Swiss authorities from extraditing her to Spain because the decision to close proceedings was not based on material grounds and had been taken by a third State.[f] With respect to the alleged risk of torture following the complainant's extradition to Spain, the Tribunal held that Spain, being a democratic State and a member of the pertinent regional and universal human rights conventions, could not be presumed systematically to practise torture. Moreover, the Tribunal rejected the claim that the charges against the complainant were primarily based on testimony extracted by torture, in the absence of any supporting evidence.[g]

2.13 According to counsel's information, the complainant was extradited to Spain after the Committee, on 6 January 2003, decided to withdraw its request for interim measures.

## The complaint

3.1 Counsel claims that following an extradition to Spain, the complainant would be at risk of being tortured during the allowable maximum of five days of incommunicado detention and that Switzerland would, therefore, be violating article 3 of the Convention if she were extradited to Spain. In substantiation of this claim, counsel refers to several reports[h] on instances of torture inflicted on suspected members or supporters of ETA as well as to the Committee's views on communication No. 63/1997 (*Josu Arkauz Arana v. France*)[i] concerning the extradition of an ETA suspect from France to Spain, where the Committee stated that "notwithstanding the legal guarantees as to the conditions under which it could be imposed, there were cases of prolonged detention incommunicado, when the detainee could not receive the assistance of a lawyer of his choice, which seemed to facilitate the practice of torture".[j] Counsel also submits that, in the absence of guarantees from the Spanish authorities, the author could not, in practice, obtain access to a lawyer of her choice and to consular protection by Germany until after incommunicado detention had ended. Furthermore, counsel argues that the numerous reports on cases of torture and maltreatment in Spanish prisons indicated a consistent pattern of gross, flagrant or mass violations of human rights, a finding which was reinforced by the fact that ETA suspects had been killed in the past by death squads (*Grupos Antiterroristas de Liberación/GAL*) linked to the former Spanish Government. In counsel's view, the complainant's personal risk of being tortured was increased by the fact that the Spanish extradition request had been based on false charges, which indicated that Spain was unwilling to grant the complainant a fair trial. In the absence of any clear evidence against the complainant, it was not excluded that Spanish police would try to extract a confession by torture.

3.2 Counsel claims that by granting the Spanish extradition request, which exclusively relied on Felipe San Epifanio's testimony, extracted by torture, and on the evidence found on the basis of this testimony in the apartment at Padilla Street, the State party violated article 15 of the Convention. Counsel argues that the use in extradition proceedings of evidence obtained as a result of torture runs counter to the spirit of the Convention since it provides the authorities of the requesting State with an incentive to disregard the prohibition of torture. By granting the Spanish extradition request, the Federal Office of Justice de facto accepted the evidence obtained through torture.

## The State party's observations on admissibility and merits

4.1 On 8 November 2002, the State party submitted its observations on the admissibility and merits of the complaint. It does not contest the admissibility of the complaint.

4.2 The State party reiterates that questions of facts and evidence as well as of innocence or guilt cannot be examined in an extradition procedure, these matters being reserved for the trial courts. Since the complainant was free to invoke her arguments before the Spanish courts, an extradition to Spain was possibly even in her own interest because it provided her with an opportunity to be released from prison following an acquittal.

4.3 With regard to the complainant's claim under article 3, the State party submits that isolated cases of maltreatment in Spanish prisons fall short of attesting to a systematic practice of torture in that country. Moreover, the complainant had failed to establish that she was at a concrete and personal risk of being tortured if extradited to Spain. In particular, the case of Josu Arkauz Arana, who had been extradited to Spain on the basis of a purely administrative procedure, which had subsequently been found illegal by the Administrative Court of Pau owing to the absence of any intervention by a judicial authority and of the possibility for the author to contact his family or lawyer, was not comparable to the complainant's situation. While the particular circumstances of Josu Arkauz Arana's extradition to Spain had placed him in a situation where he had been particularly vulnerable to possible abuse, the complainant had enjoyed the benefits of a judicial extradition procedure ensuring respect for her human rights and fundamental freedoms. According to the State party, the same guarantees applied in Spain which, being a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as to the Optional Protocol to the International Covenant on Civil and Political Rights and the European Convention on Human Rights, was subject to the scrutiny of the supervising bodies of these instruments, which provided the complainant with a preventive guarantee not to be tortured. Moreover, the complainant enjoyed consular protection by Germany and could avail herself of the services of a lawyer of her choice already hired from Switzerland. The State party could also mandate its own embassy in Spain to monitor the complainant's conditions of detention. The international attention drawn to the case provided a further guarantee against any risk of torture.

4.4 With respect to the complainant's claim under article 15 of the Convention, the State party submits that nothing establishes that Felipe San Epifanio's testimony had been extracted by torture. The complainant herself had stated that the criminal proceedings initiated by Mr San Epifanio had been closed. Again, it was for the criminal courts in Spain and not for the Swiss extradition authorities to pronounce on the admissibility of evidence.

**Complainant's comments on the State party's submissions**

5.1 In his response to the State party's submission, counsel maintains that the complainant would be at personal risk of being tortured if extradited to Spain. Such a risk was indicated by several precedents, in particular the cases of Felipe San Epifanio and Agurtzane Ezkerra Pérez de Nanclares, another convicted member of the "Barcelona" commando who had allegedly been tortured during incommunicado detention. Counsel submits a letter, dated 4 May 1994, addressed to the Juzgado de Instrucción No. 4 (Bilbao), in which Felipe San Epifanio brought criminal charges against the police, stating that the police arrested him by immobilizing him on the ground, where he received blows and kicks on his entire body, including blows to his head with a gun. Although the wounds had been stitched at hospital, no thorough medical examination had been carried out. Instead, the police allegedly had continued to maltreat him during incommunicado detention, beating him repeatedly. The following days, Mr. San Epifanio had been questioned on his links with ETA and individual members of that organization without the assistance of a lawyer. During the four days of incommunicado detention, he had allegedly been denied sleep and had not received any solid food but only large amounts of water. Counsel argues that the examining judge's decision to close criminal proceedings initiated by Mr. San Epifanio reflects the extent of impunity enjoyed by alleged torturers of ETA suspects.[k]

5.2 Counsel reiterates that numerous human rights reports provide evidence of the existence of a consistent pattern of gross, flagrant or mass violations of human rights in Spain. In particular, he cites the Committee's most recent concluding observations relating to Spain[l] in which it expressed its concern about the dichotomy between Spanish official statements denying the occurrence of torture or maltreatment except in isolated cases, and the information received from non-governmental sources indicating the persistence of cases of torture and maltreatment by Spanish security forces. Moreover, the Committee noted that Spain maintained its legislation providing for incommunicado detention for up to a maximum of five days during which the detainee had neither access to a lawyer or a medical doctor of his/her choice, nor to his/her family. Counsel submits that consular protection is inaccessible during that period.

5.3 With respect to the admissibility of Mr. San Epifanio's testimony, counsel submits that the prohibition in article 15 of the Convention applies not only to criminal proceedings in Spain but also to the complainant's extradition proceedings in Switzerland. This follows from the wording of article 15 which obliges the State party to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings". Counsel challenges the State party's argument that it had not been established that Mr. San Epifanio's testimony had been extracted by torture, arguing that the requirements as to the evidence for this torture claim should not be overly strict.[m]

### Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has not objected to the admissibility of the communication. It therefore considers that the communication is admissible and proceeds to the examination of the merits of the case.

6.2 With regard to the complainant's claim under article 3, paragraph 1, of the Convention, the Committee must determine whether the author's deportation to Spain violated the State party's obligation under that article not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In doing so, the Committee must take into account all relevant considerations with a view to determining whether the person concerned is in personal danger, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights.

6.3 The Committee recalls that during the consideration of the fourth periodic report submitted by Spain under article 19 of the Convention, it noted with concern the dichotomy between the assertion of the Government that, isolated cases apart, torture and ill-treatment do not occur in Spain, and the information received from non-governmental sources which is said to reveal instances of torture and ill-treatment by the State security and police forces.[n] It also expressed concern about the fact that incommunicado detention for up to a maximum of five days has been maintained for specific categories of particularly serious offences, given that during this period, the detainee has no access to a lawyer or to a doctor of his choice, nor is he/she able to contact his family.[o] The Committee considered that the incommunicado regime facilitates the commission of acts of torture and ill-treatment.[p]

6.4 Notwithstanding the above, the Committee reiterates that its primary task is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that the particular person would be in danger of being subjected to torture upon his/her return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.5 As to the complainant's personal risk of being subjected to torture following extradition to Spain, the Committee has noted the complainant's arguments that the Spanish extradition request was based on false accusations; that, as an ETA suspect, she was at a personal risk of being tortured during incommunicado detention, in the absence of access to a lawyer of her choice during that time; that other persons had been subjected to torture in circumstances that she considers to be similar to her case; and that consular protection by Germany as well as the prior designation of a lawyer constituted protection against possible abuse during incommunicado detention in theory only. It has equally noted the State party's submission that, in addition to the above-mentioned protection, the international attention drawn to the complainant's case, as well as the possibility for her to claim torture or ill-treatment by the Spanish authorities before the Committee and other international instances, constitute further guarantees preventing Spanish police from subjecting her to such treatment.

6.6 Having regard to the complainant's reference to the Committee's views in the case of Josu Arkauz Arana, the Committee observes that the specific circumstances of that case, which led to the finding of a violation of article 3 of the Convention, differ markedly from the circumstances in the present case. The deportation of Josu Arkauz Arana "was effected under an administrative procedure, which the Administrative Court of Pau had later found to be illegal, entailing a direct handover from police to police, without the intervention of a judicial authority and without any possibility for the author to contact his family or his lawyer".[q] By contrast, the complainant's extradition to Spain was preceded by a judicial review by the Swiss Federal Tribunal of the decision of the Federal Office of Justice to grant the Spanish extradition request. The Committee notes that the judgement of the Federal Court, as well as the decision of the Federal Office, both contain an assessment of the risk of torture that the complainant would be exposed to following an extradition to Spain. The Committee, therefore, considers that, unlike in the case of Josu Arkauz Arana, the legal guarantees were sufficient, in the complainant's case, to avoid placing her in a situation where she was particularly vulnerable to possible abuse by the Spanish authorities.

6.7 The Committee observes that possible inconsistencies in the facts on which the Spanish extradition request was based cannot as such be construed as indicating any hypothetical intention of the Spanish authorities to inflict torture or ill-treatment on the complainant, once the extradition request was granted and executed. Insofar as the complainant claims that the State party's decision to extradite her violated articles 3 and 9 of the European Convention on Extradition of 1957, the Committee observes that it is not competent *ratione materiae* to pronounce itself on the interpretation or application of that Convention.

6.8 Lastly, the Committee notes that, subsequent to the complainant's extradition to Spain, it has received no information on torture or ill-treatment suffered by the complainant during incommunicado detention. In the light of the foregoing, the Committee finds that the complainant's extradition to Spain did not constitute a violation by the State party of article 3 of the Convention.

6.9 With regard to the alleged violation of article 15 of the Convention, the Committee has noted the complainant's arguments that, in granting the Spanish extradition request, which was, at least indirectly, based on testimony extracted by torture from Felipe San Epifanio, the State party itself had relied on this evidence, and that article 15 of the Convention applied not only to criminal proceedings against her in Spain, but also to the extradition proceedings before the Swiss Federal Office of Justice as well as the Federal Court. Similarly, the Committee has noted the State party's submission that the admissibility of the relevant evidence was a matter to be decided by the Spanish courts.

6.10 The Committee observes that the broad scope of the prohibition in article 15, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence "in any proceedings", is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction, including extradition proceedings, have been made as a result of torture.[r]

6.11 At the same time, the Committee notes that, for the prohibition in article 15 to apply, it is required that the statement invoked as evidence be "established to have been made as a result of torture". As the complainant herself stated, criminal proceedings initiated by Felipe San Epifanio against his alleged torturers were discontinued by the Spanish authorities. Considering that it is for the complainant to demonstrate that her allegations are well founded, the Committee concludes that, on the basis of the facts before it, it has not been established that the statement of Mr. San Epifanio, made before Spanish police on 28 April 1994, was obtained by torture.

6.12 The Committee reiterates that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice. The Committee considers that the State party's decision to grant the Spanish extradition request does not disclose a violation by the State party of article 15 of the Convention.

7. Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the extradition of the complainant to Spain did not constitute a breach of either article 3 or 15 of the Convention.

## Notes

[a] Apparently, the apartment was rented but not inhabited by Mr. Ramos Vega.

[b] Translation by the secretariat.

[c] Pursuant to article 9 of the European Convention on Extradition, to which Germany, Switzerland and Spain are parties, "[e]xtradition may be refused if the competent authorities of the requested party have decided either not to institute or to terminate proceedings in respect of the same offence or offences".

[d] See article 3 (1) of the European Convention on Extradition.

[e] See also ibid., article 12 (2) (b).

[f] Cf. article 9 of the European Convention on Extradition.

[g] In this regard, the Federal Tribunal argues that, according to the complainant herself, the criminal proceedings initiated by Mr. San Epifanio against the police had been closed by the Spanish authorities.

[h] Human Rights Committee, concluding observations on the second period report of Spain, *Official Records of the General Assembly, Fortieth Session, Supplement No. 40* (A/40/40), paras. 465-517; reports to the Spanish Government on visits to Spain in 1997, 1998 and 2000 carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); Amnesty International, *Annual Report 2001*.

[i] *Josu Arkauz Arana v. France*, communication No. 63/1997, Views adopted on 9 November 1999. *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40* (A/55/40), annex VIII, sect. A.

[j] Ibid., para. 11.4.

[k] In the complaint, dated 18 October 2002, counsel stated that the examining judge had considered that the facts submitted by Mr. San Epifanio fell short of constituting a criminal offence, despite the fact that a medical examiner had found several haematoma and open wounds on his body after his incommunicado detention had ended.

[l] See chap. III, paras. 53-70 of the present document.

[m] This argument is contained in the complaint, dated 18 October 2002.

[n] See chap. III, para. 60 of the present document.

[o] See chap. III, para. 62 of the present document.

[p] Ibid.

[q] *Josu Arkauz Arana v. France*, op. cit., para. 11.5.

[r] See *P.E. v. France*, communication No. 193/2001, in section A of annex VI to the present document.

## B. Decisions on inadmissibility

### Complaint No. 216/2002

| | |
|---|---|
| Submitted by: | H.I.A. (represented by counsel) |
| Alleged victim: | H.I.A. |
| State party: | Sweden |
| Date of complaint: | 2 August 2002 (initial submission) |

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 2 May 2003,

Adopts the following decision on admissibility under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. H.I.A., a Jordanian national, born on 14 December 1952, currently residing in Sweden and awaiting deportation to Jordan. He claims that his forcible return to Jordan would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 29 August 2002, the Committee forwarded the complaint to the State party for comments.

**The facts as submitted by the complainant**

2.1 The complainant was born and raised in Nablus (West Bank), where he lived until 1971. That year the Palestine Liberation Organization (PLO)[a] accused him of being an Israeli spy and traitor and imprisoned him for a total of nine months, in two locations in Lebanon, before he was freed by an (unspecified) court. He alleges that he was tortured and beaten during his detention. After travelling to the Syrian Arab Republic, he was again imprisoned by PLO for the same reasons (apparently in Syria), and released by an (unspecified) court.

2.2 Following his release, the complainant lived in the United Arab Emirates for 23 years. In 1995, he allegedly wanted to sell land in Netanya, Israel, that he had inherited from his mother, but he was unable to conclude the sale as Israeli law prescribed that the transaction would have to take place in either Israel or Jordan and he could allegedly not travel to either country. He contends that he rejected a request from PLO to buy the land at a low price, was threatened that he could not sell it elsewhere and labelled a traitor.

2.3 Upon return to the United Arab Emirates after an attempt in 1996 to sell the land in Lithuania, he was arrested and detained for three months for rent arrears approximating US$ 3,000. He contends that the real reason for his arrest was "political", and that after his employer learned of his efforts to sell the land, his work contract was not renewed. The complainant contends that the United Arab Emirates intelligence service then became aware that PLO considered him a traitor, and his residence permit was withdrawn.

2.4 As he did not want to return to Jordan for fear of persecution, the complainant left the United Arab Emirates in 1998 for Lithuania. He married a Lithuanian woman and was granted a residence permit. On 6 November 1999, his residence permit expired and was not prolonged because his wife, from whom he had separated, was opposed to the renewal. On 17 December 1999, the complainant travelled to Sweden and applied for asylum on 20 December 1999. Attempting to extend his passport, the complainant's (Jordanian) lawyer informed him that the Jordanian security services requested his and his children's presence in the country in order to do so. His children and their mother reside in Damascus, on expired passports, and they allegedly cannot travel to Jordan to renew them.

2.5 On 17 April 2001, the State party's Migration Board denied the complainant's application. The Aliens Appeals Board rejected his appeal on 24 April 2002. A further application (based upon factual circumstances that had not previously been examined by the authorities) was rejected on 3 June 2002.

## The complaint

3.1 The complainant contends that owing to his continued efforts to sell land and his refusal to cooperate with PLO, he is regarded as disloyal to the Palestinian cause and is at personal risk of being subjected to torture in Jordan. He also fears that, as there is allegedly close cooperation between the Jordanian authorities and PLO, he may possibly be handed over to PLO. He cites reports of non-governmental organizations in support of the proposition that both Jordan and the Palestinian Authority are engaged in gross, flagrant and mass violations of human rights.[b]

3.2 The complainant states that the same matter has not been submitted for examination under another procedure of international investigation or settlement.

## The State party's observations on admissibility and merits

4.1 By letter of 18 November 2002, the State party contested the admissibility and merits of the complaint, pointing out, as to the facts, that while in Lithuania, the complainant applied on 30 November 1998 to its embassy in Vilnius for a three-week visa in December 1998. At the time, he held a Jordanian passport valid until February 2000. His visa application was rejected on 3 December 1998, but he entered Sweden on 17 December 1999 with a forged Lithuanian passport.

4.2 During the complainant's first interview with the Immigration Board, he stated that he had gone to Lithuania to contact Jewish connections with a view to selling the land. There, an "Arab mafia" had allegedly threatened his life because he wanted to sell land to Jews. Family members in Amman had done likewise. He also said that he had come to Sweden as he wanted to invest in Swedish business and make his living that way.

4.3 At subsequent interviews, he stated that in 1975 the Jordanian authorities refused for one year to renew his passport. After family intervention, it was renewed, allegedly only on condition that he would not return. Thereafter, it was renewed every fifth year several times until, in Lithuania, the "Arab mafia" took his passport when he purchased a forged Lithuanian passport. In Swede[illegible]tended to contact Jews for the purpose of selling his land, and he could no longer obt[illegible]rdanian passport as his efforts to sell the land were known. He had never been politically active.

4.4 The Migration Board, in rejecting his applications for asylum and a residence permit, found, inter alia, that he had not invoked any reason apart from financial ones to sell the land he had inherited. The fact that he was able to obtain extensions of his passport contradicted his contention that he was wanted by the Jordanian security service. Moreover, he was found not guilty both times he was tried in the early 1970s. Accordingly, he had not substantiated that he risked persecution as a refugee, or was otherwise in need of protection.

4.5 The Aliens Appeals Board, in turn, found that the complainant had not justified any fear of being in an exposed position in his own country, and observed that his arrests by PLO had taken place some 30 years previously. The claim that his land dealings implied great risks in Jordan was pure speculation. Moreover, it was relevant that he could extend his Jordanian passport on several occasions without difficulty. He thus had not substantiated that Jordanian authorities or others in that country were interested in him on grounds such as political opinion. The Board referred to the Committee's jurisprudence that the burden of proof was not high in alleged torture cases, complete evidence in clear support of such a claim being rare. The risk of torture upon return, while having to be more than a theoretical possibility or mere suspicion, did not have to be highly probable. Applying these standards, the Board found that there did not exist substantial grounds to believe he would in fact face torture in the event of a return to Jordan, or even a real risk thereof. In support of his subsequent application, the complainant supplied a declaration from his lawyer that the Jordanian authorities had refused to renew his passport and had instead referred him to the security service.

4.6 As to the admissibility of the case, the State party argues that the complaint is inadmissible under article 22, paragraph 2, of the Convention, for lacking the minimum substantiation required of an alleged breach of article 3. The State party refers, for this conclusion, to the Committee's jurisprudence[c] and its arguments on the merits, set out below.

4.7 As to the merits, the State party outlines the salient features of its asylum law, as applicable to the complainant. Under the asylum legislation, an alien is entitled to a residence permit (and a ban on removal) if he/she has a well-founded fear (a) of sentence of death or corporal punishment in the State of origin; (b) of being subjected to torture or other inhuman or degrading treatment or punishment; or (c) of persecution. The Migration Board (at first instance) must hold an oral hearing with the asylum-seeker, and the Aliens Appeal Board does so if this would benefit the proceedings before it. After refusal, a new application advancing factual circumstances not previously considered may be brought, in which the same grounds as above provide entitlement to a residence permit, or where enforcement of the expulsion would be contrary to requirements of humanity.

4.8 The State party refers to the Committee's constant jurisprudence that while it takes into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations in the country in question, it is ultimately the individual concerned who must show a personal risk of being subjected to torture. Concerning the general situation in Jordan, the State party points out that, while not ideal, certain improvements have taken place in the last few years. In 2001, steps were taken to strengthen the judiciary's independence, and there were neither reports of arbitrary/unlawful deprivation of life by State agents, nor of politically motivated disappearances, nor of political prisoners. The law provides prisoners with the right to counsel and to humane treatment. Most prisons meet international standards and, with some exceptions, the International Committee of the Red Cross is permitted unrestricted access to prisoners and facilities, including those of the General Intelligence Directorate. In 1999, the Government also formally granted access to the Office of the United Nations High Commissioner for Refugees, while local human rights monitors are allowed to visit prisons. The Government does not routinely use forced exile. Jordan is a party to several major human rights instruments, including, since 13 November 1991, the Convention against Torture.

4.9 As to whether the complainant faces a personal risk of torture, the State party points out that the Swedish authorities apply the test contained in article 3 of the Convention, as well as the Committee's interpretation, as shown by the Appeals Board decision in particular. The national authority conducting the interviews is in a particularly good position to assess the credibility of the complainant's statements. In this case, the Migration Board took its decision after three interviews totalling 5.5 hours, which, taken together with the facts and documentation of the case, ensured that it had a solid basis for making its assessment regarding the complainant's need for protection.

4.10 The State party argues that, as a consequence, great weight must be attached to the decisions of its authorities, and refers the Committee to their decisions. It recalls that the complainant claims that he risks torture upon expulsion to the country of his nationality as a consequence of his efforts to sell land allegedly inherited by him and his refusal to cooperate with PLO. He claims he is considered a traitor by PLO, and that PLO has an excellent relationship with the Jordanian authorities who may torture him or possibly hand him over to PLO. In response, the State party observes that at his initial interview, the complainant only referred to land problems, making no mention of having been ill-treated by PLO as an alleged spy. Instead, he claimed to have been threatened by a Lithuanian "Arab mafia" and his own family in Jordan. From the information submitted by the complainant himself, he seems to have gone to Sweden in order to sell the land in Israel and invest the proceeds in Sweden. In the State party's view, his asylum application was primarily motivated by economic interests, which are not in themselves grounds for which protection under the Convention is afforded.

4.11 As to whether any risk of torture currently exists, the complainant's alleged torture at the hands of PLO (an issue not initially raised) occurred some 30 years ago, a fact which must by now be deemed to lack relevance. Nor has the complainant in any way substantiated, beyond mere statements, that he was arrested and tortured by PLO in Lebanon and Syria. While he claimed he had only been in Jordan once for a short period, Jordan (with a large Palestinian population) remains his country of nationality and a wish not to reside there cannot ipso facto confer entitlement to protection in another country.

4.12 The State party observes that the complainant also stated that he had held a Jordanian passport for 20 consecutive years until it was taken from him by an "Arab mafia" in return for the forged passport. The complainant stated that it was renewed every fifth year, even though Jordanian intelligence allegedly knew even then of his imprisonment in the 1970s and the accusation of spying for Israel. These circumstances relating to the complainant's passport undermine the credibility of his claims.

4.13 The State party notes that at no time (including in the complaint) has the complainant claimed that he had been politically active or that he had worked in any way against Jordan or the Palestinian cause. Nor has he submitted to the Committee any information substantiating his claim that he will be "persecuted and tortured by the Jordanians and possibly handed over to the PLO". The State party thus maintains that the complainant's assertions about the consequences of his efforts to sell the land allegedly inherited by him amount to no more than mere theory and suspicion.

4.14 Taking these circumstances in their totality, the State party submits that the complainant has failed to show that there is a foreseeable, real and personal risk of torture in the event of his return to Jordan, and accordingly there is no issue arising under article 3 of the Convention.

**Complainant's comments on the State party's submissions**

5.1 By letter of 30 December 2002, the complainant responds to the State party's submissions, contending that the reason he was arrested in Lebanon in 1971 was that the Israeli intelligence service recruited him prior to his departure to study in Lebanon. He alleges he was arrested after a week and identified by a Palestinian official, related to his mother's first husband, who had been in Nablus prison when the complainant was in contact with Israeli intelligence authorities located in the same building.

5.2 From 1995 until 1997, transactions concerning land in Israel could be, and were, undertaken in Jordan. The complainant argues that if he is returned to Jordan, he would be accused of seeking asylum in Sweden and selling land in Israel. The spying issue could also be reopened, which could result in a long prison sentence during which he could be mistreated by other inmates. If he is released upon his return, he could be pursued by Palestinian organizations in Jordan. He argues that Yasser Arafat himself could reopen his case.

5.3 Finally, he alleges that the State party wishes to deport him as a matter of convenience, as his is a political case connected with both Israel and the Palestinian Authority.

**Issues and proceedings before the Committee**

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes the State party's acknowledgment that domestic remedies have been exhausted.

6.2 As to the State party's argument that the complaint is inadmissible for incompatibility with the provisions of the Convention, the Committee considers that the part of the complaint concerning the alleged possibility of being handed over to Palestinian authorities is mere speculation on the complainant's part. The Committee observes that the possibility of any such handover, let alone any consequences that might follow, have not been substantiated in any form. Similarly, the complainant's claims with respect to Jordan plainly fail to rise to the basic level of substantiation required for purposes of admissibility. As a result, the Committee considers, in accordance with article 22 of the Convention and rule 107 (b) of its revised rules of procedure, that the complaint is manifestly unfounded, and thus inadmissible.

7. Accordingly, the Committee decides:

(a) That the complaint is inadmissible;

(b) That this decision shall be communicated to the State party and to the complainant.

## Notes

[a] The complainant refers to the "PLO" (except for one reference to the Palestinian Authority) throughout the complaint.

[b] Extracts from (apparently) Human Rights Watch, "Torture and physical abuse by the security forces" (unspecified/undated web link); Amnesty International "Human rights in the Middle East: Reports: Jordan" (www.amnesty-volunteer.org/usa/mideast/reports/jordan.html; according to the web page, it was last updated on 4 January 1998);
Amnesty International, "Jordan: An absence of safeguards"
(web.amnesty.org/802568F7005C4453/0/DE839FE5F4399ED18025690000692C42?Open; 1 November 1998).

[c] See for example, *Y. v. Switzerland*, communication No. 18/1994, Views adopted on 17 November 1994, *Official Records of the General Assembly, Fiftieth Session, Supplement No. 44* (A/50/44), annex V.

## Annex VII

## List of documents for general distribution issued during the reporting period

### A. Twenty-ninth session

| Symbol | Title |
|---|---|
| CAT/C/16/Add.9 | Initial report of Estonia |
| CAT/C/33/Add.5 | Second periodic report of Venezuela |
| CAT/C/54/Add.2 | Third periodic report of Cyprus |
| CAT/C/55/Add.5 | Fourth periodic report of Spain |
| CAT/C/55/Add.6 | Fourth periodic report of Egypt |
| CAT/C/69 | Provisional agenda and annotations |
| CAT/C/SR.529-546 | Summary records of the twenty-ninth session of the Committee |

### B. Thirtieth session

| Symbol | Title |
|---|---|
| CAT/C/20/Add.8 | Second periodic report of Turkey |
| CAT/C/21/Add.5 | Initial report of Cambodia |
| CAT/C/32/Add.4 | Initial report of Moldova |
| CAT/C/43/Add.4 | Second periodic report of Slovenia |
| CAT/C/52/Add.2 | Initial report of Belgium |
| CAT/C/59/Add.1 | Second periodic report of Azerbaijan |
| CAT/C/59/Add.2 | Second periodic report of Iceland |
| CAT/C/70 | Provisional agenda and annotations |
| CAT/C/71 | Note by the Secretary-General listing initial reports due in 2003 |
| CAT/C/72 | Note by the Secretary-General listing second periodic reports due in 2003 |
| CAT/C/73 | Note by the Secretary-General listing third periodic reports due in 2003 |
| CAT/C/74 | Note by the Secretary-General listing fourth periodic reports due in 2003 |
| CAT/C/75 | Report on Mexico prepared by the Committee under article 20 of the Convention and reply from the Government |
| CAT/C/SR.547-573 | Summary records of the thirtieth session of the Committee |

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